







*John Adams.*

ADAMS 23.2 v.3



9.9-2.







THE  
THIRD PART  
OF THE  
INSTITUTES  
OF THE  
LAWS  
OF  
ENGLAND:

Adams 23.2  
v.3

CONCERNING  
High Treason; and other Pleas of the Crown,  
and Criminal Causes.

The Sixth Edition.

Ecclef. 8. 11.

*Quia non profertur cito contra malos sententia, absque timore ullo filii hominum perpetrant mala.*

*Inertis est nescire quod sibi liceat.*

*Authore* EDW. COKE *Milite.*

1517  
2

*Hæc ego grandævus posui tibi candide Lector.*

L O N D O N,

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\* Adams 23.2  
v.3

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the Pleas of the Crown.

*Multi multa, nemo omnia novit.*

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DEO,  
PATRIÆ,  
TIBI.

*A Proeme to the third part of the Institutes.*



IN the second part of the *Institutes* we have spoken only of Actsof Parliament, (*viz.*) of *Magna Carta*, and many ancient and other Acts of Parliament, which we have explained, and therein observed which of them are declaratory of the ancient Laws of this Realm, which are introductory of new, and which mixt: All of them (excepting a very few) concerning *Common Pleas*, and these two great Pronouns, *Meum* and *Tuum*.

In this Third part of the *Institutes*, we are to treat *De malo*, *viz.* of *High Treason*, and other *Pleas of the Crown*, and Criminal Causes, most of them by Act of Parliament, and some by the Common Law: in which Cases the Law of all other is most necessary to be known, because it concerneth the safety of His Majesty, the quiet of the Commonwealth, and the life, honour, fame, liberty, blood, wife and posterity of the party accused, besides the forfeiture of his lands, goods, and all that he hath: for it is truly said of these Laws, *Reliquæ leges privatorum hominum commodis prospiciunt, hæ regie majestati, subditorum vite ac publicæ tranquillitati consulunt*. And that in these Cases the ancient Maxim of the Law principally holdeth, *Misera servitus est, ubi jus est vagum, aut incognitum*. And where some doth object against the Laws of *England*, that they are dark and hard to be understood, we have specially in these and other parts of the *Institutes* opened such windows, and made them so lightsom, and easie to be understood, as he that hath but the light of nature, (which *Solomon* calleth the candle of Almighty God, *Prov.* 20. 27.) adding industry and diligence thereunto, may easily discern the same. And that may be verified of these Laws, that *Lex est lux*, *Prov.* 6. 23. the Law it self is a light. See *Rom.* 2. 14. And when we consider how many Acts of Parliament (published in print) that have made new treasons and other capital offences, are either repealed by general or expresse words, or expired: How many Indictments, Attainders of treasons, Felonies, and other crimes, which are not warrantable by Law at this day: And how few Book-Cases there have been published of treasons, (though a Subject of greatest importance) and those very slenderly reported: We in respect of the places which we have holden, and of our own observation, and by often conferences with the Sages of the Law in former times concerning criminal causes or *Pleas of the Crown*, have thought good to publish this Third part of the *Institutes*, wherein we follow that old and sure rule, *Quod judicandum est legibus, & non exemplis*. A work arduous, and full of such difficulty, as none can either feel or believe, but he only which maketh trial of it. And albeit it did often terrifie me, yet could it not in the

See the 1. part of the *Institutes* §. 500.

*Malum non habet efficientem sed deficientem causam.*  
Evil hath not an efficient, but a deficient cause, by reason of the want of some vertue or notable good.

Stamford.



## A Proeme.

end make me desist from my purpose; (especially in this work) so far hath the love and honour of my Countrey, to pass through all labours, doubts and difficulties, prevailed with me.

This, as other parts of the *Institutes*, we have set forth in our English tongue, not only for the reasons in the Preface to the First part of the *Institutes* alledged, which we presume may satisfie any indifferent and prudent reader: But specially this Treatise of the *Pleas of the Crown*, because, as it appeareth by that which hath been said, it concerneth all the Subjects of the Realm more nearly by many degrees, then any of the other. Hereunto you may add that which *Robert Holcote* an English man surnamed *Theologus magnus*, upon the second Chapter of the Book of *Wisdom*, in or about the 20. year of King E. 3. wrote to this effect. *Narrant historiae quod cum Willielmus dux Normannorum regnum Angliae conquississet, deliberavit quomodo linguam Saxoniam possit destruere, & Angliam, & Normanniam in idiomate accordari, & ideo ordinavit, quod nullus in curia regia placitaret nisi in Gallico, & iterum quod puer quilibet ponendus ad literas addisceret Gallicum, & per Gallicum Latinum, quae duo usq; hodie observantur. Hæc ille.* But the statute of 35 E. 3. c. 15. made not long after *Holcote* wrote, hath taken these edicts of a Conqueror away, and given due honour to our English Language, which is as copious and significant, and as able to express any thing in as few and apt words, as any other native Language, that is spoken at this day. And (to speak what we think) we would derive from the Conqueror as little as we could.

When *Henry* the first died, all the issue male of the Conqueror, and of his Sons were dead without issue male.

The Wife of King H. 1. was *Mawde* daughter of *Malcolme* King of Scotland surnamed *Canmor*, and of *Margaret* his wife, who was the grandchild of *Edmond Ironside* K. of England, viz. The said King *Edmond* had issue *Edward* surnamed the *Outlaw*, because he lived a long time beyond sea with *Salamon* King of *Hungary* out of the extent of the Laws of this Realm. *Edw.* had issue the said *Margaret* his eldest daughter, famous for her piety and virtue; she had issue *Mawde* wife of K. H. 1. who by her had issue *Mawde*, of whose English blood by *Geffery Plantaganet* Earl of *Anjon* all the Kings of England are lineally descended.

We have in this Third part of the *Institutes* cited our ancient Authors, and Books of the Law, viz. *Bracton*, *Britton*, the *Mirror of Justices*, *Fleta*, and many ancient Records, never (that we know) before published, to this end, that seeing the *Pleas of the Crown* are for the most part grounded upon, or declared by statute Laws, the studious Reader may be instructed what the Common Law was before the making of those statutes, whereby he shall know, whether the statutes were introductory of a new Law, declaratory of the old, or mixt, and thereby perceive what was the reason and cause of the making of the same, which will greatly conduce to the true understanding thereof.

We shall first treat of the highest, and most hainous crime of *High Treason*, *Crimen lese Majestatis*; and of the rest in order, as they are greater and more odious then others.



## CAP. I. Of High Treason.



**B**y the Statute of 25 E. 3. De prodicionibus, is declared in certain particular Cases, what offences shall be taken to be Treason, with this restriction, That if any other case supposed to be Treason should happen before any Justices, the Justices should tarry without going to judgment of the Treason, till the Case be shewed before the King and his Parliament, whether it ought to be adjudged treason or other felony: therefore we will lay our foundation upon, and begin with that Act of Parliament, the Letter whereof, in proprio idiomate ensueth.

**A**uxint pur ceo que divers opinions ount estre eins ceux beures qen case doit estre dit treason, & en quel case nemi, le roy a le request des signiors & commons ad fait declarisment que ensuist. Cest assavoir, quant home fait compasser ou imaginer la mort nostre seignior le roy, madame sa compaignie, ou de lour fitz eigne & beire. Ou si home violast la compaignie le roy, ou leigne file le roy nient marie, ou la compaignie leigne fitz & beire le roy. Ou si home leve guerre encontre nostre seignior le roy en son realme, ou soit aidant as enemies nostre dit seignior le roy en son realme, donnant a eux aid, ou comfort en son roialme, ou per aylours, & de ceo provablement soit atteint de overt fait per gents de lour condition. Et si home counterface le grand, ou privie Seal le Roy, ou sa monye. Et si home apport faux money en cest roialme counterfait al mony danglittere, si come la mony apelle \* Lusheburgh, ou auter semblable a la dit mony danglittere, sachant le money estre faux, pur merchander ou payment faire endisceite nostre dit seignior le roy & de son people. Et si home tuast Chancellor, Treasurer, ou Justices nostre seignior le roy del un Banke ou del auter, Justices in Eire & d'assises, & tous auters Justices assignes de Oier & Terminer \* esteaunts en lour places en fesants lour offices. Et soit a entendre que les cases suivnomes doit estre adjudge treason, que se extent a nostre seignior le roy & sa Roiall Majesty: Et de tiel manner de Treason la forfeiture des escheates appartenont a nostre seignior le roy, cibien des terres & tenements tenes des auters, come de luy mesme.

Divers opinions.  
Ad fait declarisment.

Nota, This is a Law for the most part Declaratory, but addeth also divers things to the ancient Law.

\* Lusheburghs, alias Luxemburghs were a kind of base Coin to the likeness of our English money, so called, because they were coined in Lusheburgh, which sometime was an Earldom, and after a Dukedom.

See Chaucer in the Prologue to the Monks Tale, the Host speaking to a lusty Monk, saith, God mot, no Lusheburghs pay ye, that is, (upon the coherence of the Verse) No payment make ye that is not full and currant.

\* Injuria illata judici seu locum tenenti regis videtur ipse Regi illata, maxime si fiat in exercente officium.



*Item* **W**Hereas divers Opinions have been before this time, in what Case Treason shall be said, and in what not; the King at the request of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth: That is to say, When a man doth compass, or imagine the death of our Lord the King, of my Lady his Queen, or of their eldest Son and Heir: or if a man do violate the Kings Compaignon, or the Kings eldest daughter unmarried, or the Wife of the Kings eldest Son and Heir: Or if a man do levy War against our Lord the King in his Realm, or be adherent to the Kings enemies in his Realm, giving to them aid and comfort in the Realm or elsewhere, and thereof be provably attainted of open deed by people of their condition. And if a man counterfeit the Kings great, or privy Seal, or his Money: And if a man bring false money into this Realm counterfeit to the Money of England, as the Money called Lulheburgh, or other like to the said Money of England, knowing the money to be false, to merchandize or make payment, in deceit of our said Lord the King and of his people. And if a man slay the Chancellor, Treasurer, or the Kings Justices of the one Bench, or the other, Justices in Eire, or Justices of Assize, and all other Justices assigned to hear and determine, being in their place doing their offices. And it is to be understood, that in the cases above rehearsed, it ought to be judged Treason, which extend to our Lord the King and his Royal Majesty: And of such Treason the forfeiture of the escheats pertaineth to our Lord the King, as well of the Lands and Tenements holden of others, as of himself.

And albeit nothing can concern the King, his Crown, and Dignity, more then Crimen lesæ Majestatis, High Treason: Yet at the request of his Lords and Commons, the blessed King by authority of Parliament made the Declaration, as is abovesaid: and therefore, and for other excellent Laws made at this Parliament, this was called *Benedictum Parliamentum*, as it well deserved. For except it be *Magna Charta*, no other Act of Parliament hath had more honor given unto it by the King, Lords Spiritual and Temporal and the Commons of the Realm for the time being in full Parliament, then this Act concerning Treason hath had. For by the Statute of 1. H. 4. cap. 10. reciting that where at a Parliament holden 21 R. 2. divers pains of Treason were ordained by Statute, in as much as there was no man did know how to behave himself, to do, speak, or say, for doubt of such pains: It is enacted by the King, the Lords and Commons, that in no time to come any Treason be judged otherwise then it was ordained by this Statute of 25. E. 3. The like honor is given to it by the Statute of 1. E. 6. c. 12. and by the Statute of 1. Ma. c. 1. Sess. 1. different times, but all agreeing in the magnifying and extolling of this blessed Act of 25 E. 3. Of this Act of 1. Maria, we shall speak more hereafter. But to proceed to give a light touch how other Acts of Parliament have been called.

The Parliament holden at Oxford An. 42 H. 3. was called *Insanum Parliamentum* 12. E. 2. the Parliament of Whitebands, *Albarum Fibularum* or *Metellarum*. 5. E. 3. *Parliamentum bonum*. 10. R. 2. *Parliamentum q̄ fecit mirabilia*, that wrought wonders. 21. R. 2. *Magnum Parliamentum*. 6. H. 4. *Parliamentum indoctum*, Lack-learning Parliament. 4. H. 6. *Parliamentum Fustium*, the Parliament of Wars. The Session of Parliament in An. 14. H. 8. called the Black Parliament. The Act of 1 E. 6. was called *Parliamentum pium*, the Pious Parliament. And the said Act of 1 Mar. *Parliamentum Propitium*, The Merciful Parliament. The Parliaments of Queen Elizab. stiled *Pia, justa, & provida*. The Parliament holden An. 21 of King Jam. called *Fœlix Parliamentum*, The Happy Parliament

1 H. 4. cap. 10:

1 E. 6. cap. 12,  
1 Mar. cap. 1.  
Sess. 1.



liament. And the Parliament holden in the third year of our Sovereign Lord King Charles, Benedictum Parliamentum, the Blessed Parliament. The severall reasons of these former Appellations appear of Record and in History, and the latter are yet fresh in memory. At the making of the Statute of 25 E. 3. the High Courts of Justice were furnished with excellent men, viz. Sir William Shardshill Knight, (shortly written in Books Shard) Lord Chief Justice of the Kings Bench, and his Compagnions Justices of that Court; Sir John Stonor Knight, commonly written in books Stone, Lord Chief Justice of the Court of Common Pleas, and his Compagnions Justices of that Court; and Gervallus de Willford, Lord Chief Baron of the Exchequer; men famous in their profession, and excellent in the knowledge of the Laws. At the making of the Statute of 1 H. 4. were Sir Walter Clopton Knight, Lord Chief Justice of the Kings Bench, and his Compagnions Justices of that Court; and Sir William Thirning Knight, Lord Chief Justice of the Court of Common Pleas and his Compagnions Justices of that Court; and Sir John Castle Knight, Lord Chief Baron of the Exchequer; Men equal to any of their Predecessors in the knowledge of the Laws. At the making of the Statute of 1 E. 6. were Sir Richard Lister Knight, Lord Chief Justice of the Kings Bench, and his Compagnions Justices of that Court; and Sir Edward Montague Knight, Lord Chief Justice of the Court of Common Pleas, and his Compagnions Justices of that Court; and Sir Roger Cholmeley Knight, Lord Chief Baron of the Exchequer; men of that excellency, as they were worthy of the name of the Worthies of the Law. At the making of the Statute of 1 Mar. were Sir Thomas Bromley Knight, Lord Chief Justice of the Kings Bench, and his Compagnions Justices of that Court; and Sir Richard Morgan Knight, Lord Chief Justice of the Court of Common Pleas, and his Compagnions Justices of that Court; and Sir D. Broock Knight, Lord Chief Baron of the Exchequer; men renowned for their great knowledge and judgment in their profession. All these we have named in the honour of them, and of their Families and Posterities, for that they in their severall times were great furtherers of these excellent Laws concerning Treason. In Memoria aeterna erit justus. And all this was done in severall ages, that the fair Lillies and Roses of the Crown might flourish, and not be stained by severe and sanguinary Statutes. But let us come to the Act it self, and for the better understanding thereof, and of the Book Cases, and other Records grounded upon the same: Let us divide this Act concerning High Treason into severall Classes or Heads, and then prosecute the same in order.

By compassing or imagining the death of the	King,	} and declaring the same by some overt deed.
	Queen,	
	Prince:	

The first concerneth Death,

By killing and murdering of the	Chancellor,	} In their places doing their offices.
	Treasurer.	
	Justices of the one Bench or other.	
	Justices in Eyre.	
	Justices of Assize.	
	Justices of Oier and Terminer, &c.	

The second concerneth Violation, that is, to Violate, or Carnally to know	} The Kings Consort, or Queen. The Kings Eldest Daughter unmarried. The Princes Wife.

The third is Levying war against the King.

The



The fourth is adhering to the Kings enemies within the Realm, or without, and declaring the same by some overt act.

The fifth is counterfeiting of { The Great Seal.  
The Privy Seal.  
The Kings Coin.

The sixth and last, by bringing into this Realm counterfeit money to the likeness of the Kings Coin, &c.

So as Treason is *Membrum divisum*, and these several Classes or Heads are *Membra dividenda*. And if the offence be not within one of these Classes or Heads, it is no Treason.

[Treason.] is derived from [trahir] which is treacherously to betray. Trahue, Betrayed, and Trahison, per contractionem, Treason, is the betraying it self.

*Detegit imbelles animos, nil fortiter audens Proditio.*

Inter legis Canuti fo. 118. ca. 16. *Proditiones hlapopðspice numerabantur inter scelera jure humano inexpiabilia.* Treason is divided into two parts, viz. High Treason, *Alta Proditio*, and into Petit Treason, *Proditio Parva*. The Latin word used in Law is *Proditio* (à *Prodere*) and thereof cometh *Proditorie*, which of necessity must be used in every Indictment of Treason, and cannot be expressed by any other word, *Periphrasis*, or *Circumlocution*.

[Ad fait Declarisment.] This Law is for the most part Declaratory of the ancient Law, and therefore this word [Declarisment] is used. But yet the studious Reader shall observe, that in divers Clauses it addeth to the former Law, whereunto this word [Declarisment] will sufficiently extend.

[Quant Home, &c.] This extendeth to both Sexes, Homo including both Man and Woman. This Act is general, and therefore extendeth to some persons which claimed a privilege to be exempted from secular Jurisdiction. (For example,) \* Adam de Orleton Bishop of Hereford was indicted of High Treason for aiding the Mortimers, &c. with Men, and Armour against King E. 2, &c. Whereupon he was arraigned, and alledged *Se absque offensa Dei, et Sanctæ Ecclesiæ, et absque licentia Domini summi Pontificis non posse nec debere respondere in hac parte.* And thereupon the Archbishop of Canterbury, York, and Dublin, and their Suffragans came to the Bar, claimed his privilege, and took him away; and he was so far from punishment, as he was after translated to Worcester, and after to Winchester. But this Statute (to clear all doubts) extendeth to all persons, \* as well Ecclesiastical as Temporal, and so hath it ever since been put in execution, as hereafter in divers Cases it appeareth. See hereafter Cap. Murdre et Larceny.

A man that is non compos mentis, as shall be said moze fully hereafter in the next Section, or an Infant within the age of discretion is not (un home) within this Statute; for the principal end of punishment is, That others by his example may fear to offend, *Ut poena ad paucos, metus ad omnes perveniat*: But such punishment can be no example to Mad-men, or Infants that are not of the age of Discretion. And God forbid that in Cases so penal, the Law should not be certain; and if it be certain in case of Murder and Felony, a fortiori, it ought to be certain in case of Treason.

If a man commit Treason or Felony and confesseth the same, or be thereof otherwise convicted, if afterward he become *De non sane memorie* (qui patitur exilium mentis) he shall not be called to answer: Or if after judgment he become *De non sane memorie*, he shall not be executed, for it cannot be an example to others.

And all Aliens that are within the Realm of England, and whose Sovereigns

\* Rot. Romana.  
17 E. 2. m. 6.  
Rot. Claus. 1 E.  
3. part. 1. memb.  
13.  
Artic. Cleri. 9 E.  
3. cap. 15. & 16.  
Tr. 21 E. 3. coram  
Rege Rot. 173.  
*Privilegium seculari  
non competit  
seditioso equitanti  
cum armis, &c.  
secundum leges ec-  
clesiæ.*  
25 E. 3. stat. 1.  
cap. 4. which was  
before this Act.  
Mich. 31 E. 3. co-  
ram Rege Rot.  
55. Buck. Abbot  
de Miffeny.  
See in the Chap:  
of Clergy in  
what cases the  
privilege of  
Clergy is taken  
away.  
\* To persons Ec-  
clesiastical, and  
Temporal.  
Bract. lib. 3. 120.  
121. 134. 135.  
Britton. 5. 18.  
Fleta cap. 23. 30.  
Mirror cap. 1.  
cap. 2. §. 11.  
de appeal de ho-  
micide 3 E. 3.  
cor. 383. 25 E. 3.  
42. cor. 139. 26.  
ass. 27. 3 H. 7. cap.  
3. 3 H. 7. 1. 12.  
21 H. 7. 31. 1 Mar.  
Dier 140. Tr. 32.  
E. 1. Coram Rege.  
15. 8 E. 2.  
Corone. 369. 395.  
Custum. de  
Norm. ca. 79. fo.  
94. 95. 33 H. 8.  
cap. 20.  
1 & 2 Mar. c. 10.  
To Aliens.



raignes are in amity with the King of England, are within the protection of the King, and do owe a local obedience to the King, ( are homes within this Act ) and if they commit High Treason against the King, they shall be punished as Traitors, but otherwise it is of an enemy, whereof you may read at large, Lib. 7. Calvins Case, fo. 6. &c. & 17, &c.

[ Fait Compasser. ] Let us see first what the compassing or imagining the death of a Subject was before, and at the time of the making of this Statute, *a* when *Voluntas reputabatur pro facto*. And *b* Bracton saith, that *Spectatur voluntas & non exitus, & nihil interest utrum quis occidat, aut causam mortis præbeat*. So as when the Law was so holden, he must *causam mortis præbere*, that is, declare the same by some open deed tending to the execution of his intent, or which might be cause of death, as Justice *c* Spigurnel reporteth a Case adjudged; That a mans wife went away with her Avowterer, and they *d* compassed the death of the Husband, and as he was riding towards the Sessions of Oier and Terminer and Gaol delivery, they assaulted him and stroke him with weapons, that he fell down as dead, whereupon they fled; the Husband recovered and made Hue and Crye, and came to the Sessions and shewed all this matter to the Justices, and upon the Warrant of the Justices, they were taken, indicted, and arraigned; and all this special matter was found by Verdict; and it was adjudged that the man should be hanged, and the woman burnt. And Sir William Beresford Chief Justice of the Common Pleas said, that before him and his Compagnions Justices of Oier and Terminer and Gaol delivery, a Youth was arraigned, for that he would have stolu the goods of his Master, and came to his Masters Bed where he lay asleep, & with a knife attempted with all his force to have cut his throat; and thinking that he had indeed cut it, he fled, whereupon the Master cried out, and his Neighboys apprehended the youth, and all this matter being found by special Verdict, in the end he was adjudged to be hanged, &c. *Quia \* voluntas reputabitur pro facto*. So as it was not a bare compassing or plotting of the death of a man, either by word, or writing, but such an overt deed, as is aforesaid, to manifest the same. So as if a man had compassed the death of another, and had uttered the same by words or writing, yet he should not have died for it, for there wanted an overt deed tending to the execution of his compassing. *e* But if a man had imagined to murder, or rob another, and to that intent had become Infidator viarum, and assaulted him, though he killed him not, nor took any thing from him, yet was it felony, for there was an overt deed. But in those days, in the Case of the B. if a man had compassed, or imagined the death of the B. ( who is the head of the Common wealth ) and had declared his compassing or imagination by words or writing, this had been High Treason, and a sufficient overture by the ancient Law. And herewith agree all our ancient Books. Glanv. saith, *Cum quis de morte Regis, &c. infamatur, &c.*

Bracton in the title *De criminibus læsæ majestatis*. *Ipsè accusatus præloquutus fuit mortem regis*. And Britton. fol. 16. Grand treason est a compasser nostre mort. and fo. 39. b. Cyface lencusor son appeale, &c. que il oya mesme cœi John pur parler tiel mort, ou tiel treason, &c. And Fleta saith in his title *De crimine læsæ majestatis*, si quis mortem regis ausu temerario machinatus fuerit, &c. quamvis voluntatem non perduxit ad effectum. And the Mirror saith, *Crime de majestie est un peche horrible fait al roy, &c. p ceux q occirent le roy, ou compassant a faire*. And it will delight you (in respect of reverend antiquity) to hear a President of an appeal (which then and after was in use) of High Treason, en pleine pliam, &c. en temps roy Edmond en cestés parolx. Rocelyn ici dit vers Waligrot illonq q a tiel jour tiel anne del raigne de tiel roy, en tiel lieu vient celui Waligrot a cœi Rocelyn, & lui trova destre en company, et en aide ensiblement ove Atheling, Thurkild, Ballard, et autres de faire prisonier, ou en tache pur occire nre seignior le roy Edmond, ou en auter manner p coupe feloniousment, et a ceo faire fuer entreinres a ceo counsel celer, & a ceo felony issint fornit solong lour poier. By all which it is manifest, that compassing, machinating, counselling, &c.

*a* See hereafter, cap. 73.

Where and how *Voluntas reputabatur pro facto*, by the ancient Law, and the change thereof.

*b* Bracton, fol. c 15 l. 2. tit. Cor. 383

*d* Note this word [*compassio*.]

*\** See hæc voluntas non intelligitur sinit de voluntate nudis verbis, ant

seriotis proposita, sed mundo manifestata fuit per apertum factum.

*Id est, cum quis degerat operam, quantum in ipsi*

*fuit, ad occidendum, & sic d. similiter.*

*e* Infidator viarum See hereafter, ca. 5. De Hæresie.

25 E. 3. 42. 27 aff. p. 38. 4 H. 4. c. 2.

13. H. 4. 7. per. Galcoign.

But see 9 E. 4. fo.

26. Infidator viarum without taking of somewhat, resolved to be no felony.

V. lib. 11. fo. 29. b. Al. Poulters

Case. Vid. postea cap. 16. Robbery, in fine.

Glanvil. lib. 14.

cap. 14. lib. 1. c. 2.

Bract. lib. 3. f. 118

Britton fol. 16. & 39. b.

Note the word *Compass*.

Fleta lib. 1. c. 21.

Mir. cap. 1. §. 5.

cap. 2. §. 11.

Note this word *Compass*.

Mirror c. 2. §. 11.

De lappeale de Majestie.

Rot. par. 25 E. 3.

part 1. m. 16.

Vide Mic. 4 H. 4.

Coram Rege.

Rot. 22.

See hereof more in the 57 Chap. of Appeals.

Bracton, Britton, Fleta, &c.



to kill the King, though it hath no other declaration thereof but by words, was High treason by the Common Law. And see hereafter, verb. per overt fait, & de ceo provablement, &c.

*Regula.*

Mar. par. pa. 51.  
Holling. pa. 26. b.  
Mar. Westm.  
W. Malmesbury.

Custum. de Nor.  
cap. 14.  
Vide inter Indi-  
camenta de 17.  
E. 4. de Th. Bur-  
dit. al. sed judi-  
candum est legi-  
bus, & non exem-  
plis.

23 Eliz. cap. 2.  
\* Inter leges Alve-  
redi cap. 4.  
Lib. 4. fo. 124.  
Beverlies case.  
Ovid. Scilicet in  
superis etiam fortu-  
na luenda est: Nec  
veniam laeso numine  
casus habet.

33 H. 8. cap. 20.  
\* 1 & 2 Ph. &  
Mar. ca. 10.  
a Brañ. li. 3. fo.  
118.  
Britton cap. 8.  
a disheriter.  
Glanv. lib. 1. ca. 2.  
Fleta li. 1. ca. 21.  
Mirror ca. 1. §. 5.  
Vers Roy de latre.

a 13 Eliz. cap. 1.  
nota declared.  
Brook tit. trea-  
son 24.  
b 1 H. 4. 19 H. 6.  
47. 13 H. 8. 12.  
vide infra verb.  
¶ Per overt fait.

3 Mar. Dier. 131.  
pl. 7.

¶ **Fait compasser ou imaginer.** ] So as there must be a compassing or imagination, for an Act done per infortunium, without compassing, intent, or imagination, is not within this Act, as it appeareth by the exprels words thereof, Et actus non facit reum nisi, mens sit rea. And if it be not within the words of this Act, then by force of a clause hereafter, viz. Et pur ceo que plusors auters, &c. It cannot be adjudged Treason, untill it be declared Treason by Parliamt, which is the remedy in that case, which the makers of the Law provided in that case. This compassing, intent, or imagination, though secret, is to be tryed by the Peers, and to be discovered by circumstances precedent, concomitant, and subsequent, with all endeavour evermore for the safety of the King. This was the case of Sir Walter Tirrel a French Knight, who the first day of Aug. Ann. 13. Williel. 2. An. Dom. 1100. being a hunting with the King in the new forrest, was commanded by the King to shoot at a Hart, Exiit ergo telum volatile, & obstante arbore in obliquum reflexum faciens, per medium cordis regem sauciavit, qui subito mortuus corruit.

It appeareth also by the Custom of Normandy treating of Treason, and the exposition of the same, that this Act was not Treason. To calculate or seek to know by setting of a figure or witchcraft, how long the King shall reign or live, is no Treason, for it is no compassing, or imagination of the death of the King, within this Statute of 25 E. 3. And this appeareth by the judgment of the Parliament in 23 Eliz. whereby this offence was made felony during the life of Queen Eliz. which before was punishable by fine and imprisonment.

The ancient Law was, that if a mad man had killed or offered to kill the K. it was holden for Treason; and so it appeareth by K. Alfreds Law before the Conquest, and in lib. 4. in Beverlies case. But now by this statute, and by force of these words, Fait compasser ou imaginer la mort, he that is non compos mentis and totally deprived of all compassings and imaginations, cannot commit High Treason by compassing or imagining the death of the K. for furiosus solo furore punitur: but it must be an absolute madness, and a total deprivation of memory. And this appeareth by the Statute of 33 H. 8. for thereby it is provided, that if a man being Compos mentis commit High Treason, and after accusation, &c. fall to madness, that he might be tried in his absence, &c. and suffer death, as if he were of perfect memory: for by this statute of 25 E. 3. a mad man could not commit High Treason. It was further provided by the said Act of 33 H. 8. that if a man attainted of Treason became mad, that notwithstanding he should be executed; \* which cruel and inhumane Law lived not long, but was repealed, for in that point also it was against the Common Law, because by intendment of Law the execution of the offender is for example, ut poena ad paucos, metus ad omnes perveniat, as before is said: but so it is not when a mad man is executed, but should be a miserable spectacle, both against Law, and of extream inhumanity and cruelty, and can be no example to others.

¶ **Mort.** ] a He that declareth by overt Act to depose the K. is a sufficient overt Act to prove, that he compasseth and imagineth the death of the King. And so it is to b imprison the King, or to take the K. into his power, and manifest the same by some overt Act, this is also a sufficient overt Act for the intent a foresaid. But peruse advisedly the statutes of 13 Eliz. cap. 1. 2. & 14. Eliz. cap. 1

¶ **Nre feignor le Roy.** ] These words extend to all his successors, as it hath been always taken.

¶ **Le Roy** ] Is to be understood of a King regnant, and not of one that hath but the name of a King, or a nominative K. as it was resolved in the case of



of King Philip, who married Queen Mary, and was but a nominative King, for Queen Mary had the office and dignity of a King, so as she that wanted the name of a King, but had the office and dignity, was within this Act of 25 E. 3. And he that had the name, and not the office and dignity of the King, was not within it. And therefore an Act was made, that to compass or imagine the death of King Philip, &c. during his marriage with the Queen, was Treason. A Queen regnant is within these words, [nre seignior le Roy] For she hath the office of a King. 1 & 2 Ph. & Mar. cap. 10.

This Act is to be understood of a King in possession of the Crown and Kingdom: For if there be a King regnant in possession, although he be Rex de facto, & non de jure, yet is he seignior le Roy within the Purview of this Statute. And the other that hath right, and is out of possession, is not within this Act. Nay if Treason be committed against a King de facto, & non de jure, and after the King de jure cometh to the Crown, he shall punish the Treason done to the King de facto: And a pardon granted by a King de jure, that is not also de facto, is void. Vide 11 H. 7. c. 1. 4 E. 4. 1. 9 E. 4. 1, 2.

If the Crown descend to the rightful Heir, he is Rex before Coronation: for by the Law of England there is no interregnum: and Coronation is but an ornament or solemnity of honour. And so it was resolved by all the Judges Hil. 1 Ja. in the Case of Watson and Clark Seminary Priests: for by the Law there is always a King, in whose name the Laws are to be maintained, & executed, otherwise Justice should fail. Divers Kings before the Conquest voluntarily renounced their Kingly office: And so did King H. 2. in the 16. year of his reign, and Henry his Son was created and Crowned.

It appeareth by Briton, that to compass the death of the father of the King, is treason, and so was the Law holden after that: For after King E. 2. had dismissed himself of his Kingly office, and duty, and his son by the name of E. 3. was crowned, and King regnant, those cursed Caitifs, Thomas Gourney and William Ocle, and others were attainted of High Treason for murdering the Kings father, who had been King by the name of E. 2. and had judgment to be drawn, hanged, and quartered.

\* The like judgment was given against Sir John Matrevers Knight, and others, as being guilty of the death of the Kings uncle, Edmond Earl of Kent, which at that time (being so near of the blood Royal) was by some holden also Treason. But now this Act of 25 E. 3. hath restrained High Treason in case of death al nre seignior le Roy, sa compaignie, & al eigne fitz, & heire le Roy. See the Preamble, Auxint opur ceo que divers opinions ont estre eins ceux heures, que gen case doit estre dit treason, & in quel case nemi. Rot. Parliam. 4 E. 3. num. 5: \* Eodem Rot. num. 3. & 4.

Nicholas de Segrave was charged in open Parliament in presentia dñi Reg. comitum, baronum, & aliorum de consilio Regis tunc ibi existent', that the King in the war of Scotland being amongst his enemies, Nicholas Segrave his leige man, and holding of the King by homage, and fealty, served him for his aid in that war, did maliciously move contention and discord without cause, with John de Crombwell, charging him with many enormous crimes, and offered to prove it upon his body. To whom the said John answered, that he would answer him in the Kings Court, as the Court should consider, &c. and thereupon gave him his faith. After Nich. withdrew himself from the Kings Host, and from the Kings Aid, leaving the King amongst his enemies, in periculo hostium suorum, and adjourned the said John to defend himself in the Court of the K. of France, and prefixed him a certain day. Et sic quantum in eo fuit, subjiciens, & submit-tens dominium regis, & regni subjectioni dñi regis Franciæ, ad hoc faciendum, iter suum arripuit usque Dovoriam, ad transfretandum, &c. All which the said Nich. confessed, & voluntati dñi regis de alto & basso inde se submitit. Et super hoc dñs Rex volens habere avifamentum Comitum, Baronum, Magnatum, & aliorum de consilio suo, injunxit eisdem in homagio, fidelitate, et ligeantia quibus ei tenentur, quod ipsam fideliter consulerent, qualis pœna pro tali facto sic cognito fuerit infligenda: qui omnes, habito super hoc diligenti tractatu, & avifamento, consideratis, & intellectis omnibus in prædicto facto contentis, &c. dicunt quod hujusmodi factum meretur amissionem vitæ & membrorum, &c. So as this offence was then solemnly in Parliament adjudged High Treason. But this is taken

Hil. 1 Ja. in the case of Watson and Clark seminary Priests. 9 E. 4. 1. b.

See the Preamble, Auxint opur ceo que divers opinions ont estre eins ceux heures, que gen case doit estre dit treason, & in quel case nemi. Rot. Parliam. 4 E. 3. num. 5: \* Eodem Rot. num. 3. & 4.

Plac. in Parliam. E. 1. anno regni sui 33. North. Rot. 17. & 22.



taken away by this Act of 25 E. 3. being not under any of the classes, or heads specified in this Act.

40 Ass. 25.

So Piracy by any of the Kings Subjects upon another, was taken to be Treason before this Act, for so is the book to be intended, because a Pirat is Hostis humani generis. But by this Act it is not now to be judged Treason. See hereafter in the chapter of Piracy.

Britton cap. 8. and other ancient Authors, *ubi supra*.

One doth marry a Queen regnant, if the Husband compass the death of the Queen, and declare the same by overt Act, he is guilty of Treason, and punishable by this Act, for to this and many other purposes she is a distinct person by the Common Law. And so if a Queen wife to a King regnant, compassed the death of the King, and declare the same by overt Act, she is guilty of Treason punishable by this Act. So as (that we may speak it once for all) by these and many others that might be cited, (some whereof shall hereafter be touched) the preamble of this Act appeareth to be true, that divers opinions had been before the making of this act, what offences should be adjudged High Treason, and what not.

Rot. parlia. 3 R. 2. num. 18.  
See placita coram reg Hill. an. 3 R. 2. (Cavendish) rot. 8. London. Holl. chron. 3 R. 2. pa. 422. 60. b. & c.  
\* Monopoly.

This Statute having restrained the compassing, &c. of death to the King, Queen, and Prince, it came to pass after the making of this Act, that in 3 R. 2. two Citizens of London, John Kerby Mercer, and John Algore Grocer, conceiving malice against John Imperial Janevois of St. Mary in Genoa that came as Embassador from the State of Genoa to the King, (under the Kings Letters of safe conduct, for alliance to be had between the King and the Duke and Comminality of Genoa aforesaid) for that the said Jo. Imperial had obtained a \* monopoly to furnish this Land (keeping his Staple at Southampton) of all such wares as came from the Levant, so plentifully as was to be had in all the west parts of Christendom, the said John Imperial was killed by them, as more at large appears by the record. And albeit the said John Imperial was an Embassador under the Kings safe conduct, and the killing of him was *justi belli causa*, yet the killing of him was no Treason, because it was not under any of the said clauses or heads, until it was at that time declared by Parliament in these words, *Quel case examine & dispute inter les seigniors, & commons, & puis m're al Roy in pleine Parliament, estoit illonques devant n're seignior le Roy declares, determinus, & assentus, que tiel fait, & coupe est Treason, & crimé de Royal Majesty blemye, en quel case il ne doit allower a nulluy priviledge del Clergie, and accordingly the said Kerby and Algore were attainted of High Treason in the Kings Bench, Hil. 3. R. 2. ubi supra: but this declaration is taken away by the Stat. of 1 Mar. as hereafter shall be said, and yet of this declaration we shall make much use hereafter.*

nota his end.

2 Regum cap. 10. 4. 12. 31.  
The killing of a foreign Ambassador.  
*Honor legati, honor mittentis est, & proregis dedecus redundat in regem.*

22 Ass. pag. 49.  
More than Ambassador. le Roy.

In the 22 year of E. 3. which was about 3 years before the making of this Act, one Joh. at Hill had murdered A. de Walton the Kings Ambassador, *nuncium dñi regis miss. ad mandatum regis exequendum*: this was adjudged High Treason, for which he was drawn, hanged, and beheaded. &c. For true it is, *quod legatus ejus vice fungitur, a quo destinatur, & honorandus est sicut ille cujus vicem gerit; & legatos violare contra jus gentium est*. But by this Act of 25 E. 3. it is restrained to the death of n're seignior le Roy, and therefore prorex is not with in this Statute.

[ Sa compaigne. ] This word compaigne, (which is all one with consort or wife) was used, that compassing, &c. must be during the marriage with the King; for after the Kings death she is not sa compaigne, and therefore it extendeth not to a Queen dowager, and for this cause this word compaigne was used in this Act.

Britton *ubi supra*.

[ Le fitz eigne & heire le Roy. ] The eldest Son & Heir of a Queen Regnant is within this Law. Before this Statute some did hold, that to compass the death of any of the Kings children, was Treason. But by this Act it is restrained to the Prince, the Kings Son, being Heir apparant to the Crown for the time being: and he need not be the first begotten Son, for the second after the decease of the first begotten without issue, is Fitz eigne within this



this Statute, & sic de cæteris. If the Heir apparant to the Crown be a collateral Heir apparant, he is not within this Statute, until it be declared by Parliament, as it was in the Duke of Yorks Case.

Roger Mortimer Earl of March was in Anno Dom. 1487, (11 R. 2.) proclaimed Heir apparant. An. 39 H. 6. Richard Duke of York was likewise proclaimed Heir apparant. And so was John de la Poole Earl of Lincoln, by R. 3. And Henry Marquiss of Creter, by King Henry the eighth. But none of these or of the like, are within the Purvien of this Statute. And now that we have handled compassings and imaginations, let us proceed to the residue which concern Acts and Deeds.

¶ Heire is here taken for Heir apparant, for he cannot be Heir in the life of the Father.

¶ Si home violast la compaigne le Roy. ] The Mirror saith, Crime de Majesty veres le Roy p ceux avowterors q spergissent la feme le Roy. Whereby it appeareth that this was High Treason by the Common Law.

Violare is here taken for carnaliter cognoscere; and it is no Treason, unless it be done during the marriage with the King, and extendeth not to a Queen Dowager as hath been said. And if the wife of a King doth yield and consent to him that committeth this Treason, it is Treason in her.

¶ Ou la compaigne de lour fitz & heire. ] This also extendeth to the wife of the Prince during the coverture between them, and not to a Dowager, and if the wife yield and consent to him that commits this Treason, it is Treason in her.

¶ Heire. ] Here is taken ut supra, for Heir apparant.

¶ Ou leigne file nient marie. ] (That is,) eldest daughter not married at the time of the violation, albeit there had been an elver daughter then she who is dead without issue. \* The Mirror. Avowterors q spergissent la file le Roy eignes legittime, avant ceo q el soit marie.

And the reason that the eldest only is here mentioned, is, for that for default of issue Male, she only is inheritable to the Crown.

¶ Ou si home leva guerre enconter nostre seignior le Roy. ] This was High Treason by the Common Law, for no Subject can levy War within the Realm without authority from the King, for to him it only belongeth. See F. N. B. 113. a. Le Roy de droit doit saver & defender son realme vers enemies, &c.

b A compassing or conspiracy to levy War is no Treason, for there must be a levying of war in facto. But if many conspire to levy war, and some of them do levy the same according to the conspiracy, this is High Treason in all, for in Treason all be principals, and war is levied.

If any levy war to expulse Strangers, to deliver men out of Prisons, to remove Counsellors, or against any Statute, or to any other end, pretending Reformation of their own heads, without warrant; this is levying of war against the King: Because they take upon them Royal Authority, which is against the King. There is a diversity between levying of war and committing a great Riot, a Rout, or unlawful assembly. c For example, as if three, or four, or more, do rise to burn, or put down an inclosure in Dale, which the Lord of the Manor of Dale hath made there in that particular place, this or the like is a Riot, a Rout, or an unlawful Assembly, and no Treason. But if they had risen of purpose to alter Religion established within the Realm, or Laws, or to go from Town to Town generally, and to cast down Inclosures, this is a levying of war (though there be no great number of the Conspirators) within the Purvien of this Statute, because the pretence is publick and general, and not

Mirror cap. 1. §. 5.  
Brit. c. 23 fo. 43. a.

33 H. 8. cap. 21.

Pasch. 28 H. 8. in  
Spilmans Reports  
in Case of Queen  
Anne.

33 H. 8. ubi su-  
gra, in Case of  
Queen Katharine.

\* Mirror cap. 1. §. 5.  
See Brit. cap. 23.  
fo. 43. 44. & cap.  
29. fol. 71.  
1 Mar. Parl. 2. c. 1.  
a Glanvil. lib. 1.  
cap. 2. l. 14. c. 1.  
BraDon. lib. 3.  
fol. 118.

Britton. fo. 16. & c.  
Hera. li. 1. ca. 21.  
Mir. ca. 1. §. 5.  
b 1 Mar. § 8. b.  
Dier. in Sir N.  
Throgmortons Case.  
See 21 E. 3. 23.  
21 R. 2. cap. Re-  
peal.

1 H. 4. cap. 3.  
8 E. 3. 20.  
See hereafter cap.  
73. against going  
or riding armed.  
c See Rot. Parl. in  
Cro. Epiphan.

20. E. 1. Rot. 23.  
Humphrey de Bohuns  
Case 4. Eliz. 210.  
b. Dier.

See the Statute of  
1 Mar. cap. 2. By  
which, Grand Ri-  
ors in some Cases  
be made felony.



Pasch. 39 Eliz.  
by all the Judges of  
England, I being  
Attorney General,  
and present.

private in particular. And so it was resolved in the Case of Richard Bradshaw Miller, Robert Burton Hason, and others of Oxfordshire, whose Case was, That they conspired and agreed to assemble themselves with so many as they could procure at Enslow-hill in the said County, and there to rise, and from thence to go from Gentlemans house to Gentlemans house, and to cast down Inclosures, as well for enlargement of Highways as of errable Lands. And they agreed to get Armour and Artillery at the Lord Norrys his house, and to wear them in going from Gentlemans house to Gentlemans house for the purpose aforesaid, and to that purpose they perswaded divers others: and all this was confessed by the offenders. And it was resolved, that this was a compassing and intention to levy war against the Queen, because the pretence was publick within the Statute of 13 Eliz. cap. 1. (the Letter whereof herein shortly followeth,) and the Offenders were attainted and executed at Enslow Hill.

And this diversity is proved by a latter Branch of this Act.

Et si per case a'cun home de cest realme chimancha arme discovert secretment ove gents armes, contre ascun autre, pur luy tuer, ou disrober, ou pur luy prender, ou retenir tanq il face fine, ou ransom pur la deliverance, nest lention le Roy & de son counsel, q en tiel case soit adjudge Treason, mes soit adjudge felony, ou trespasse, solong le ley del tre auncientment use. Whereby it appeareth that bearing of Arms in warlike manner, for a private revenge or end, is no levying of war against the King within this Statute. So that every gathering of force is not High Treason. And so it was resolved in Parliament, in 5 H. 4. Rot. Parliam. nu. 11. & 12. the Earl of Northumberland's Case.

Rot. Parl. H. 4.  
nu. 11. 12.

13 Eliz. cap. 1. b.  
The Indictments  
and Attainders of  
Treason by force  
of this Statute are  
not more to be  
followed, because  
the Statute which  
made them good,  
is expired.

Dier. 3. & 4. Ph. &  
Mar. 144.

10 E. 4. 6. 1 Mar.  
Treason, Br. 24.

Ter. Mic. 8 H. 8.  
Mich. 7. H. 5.

Coram Rege.  
Heref. Rot. 20.

4 Rot Parl.  
20 E. 1. nu. 2.

John de Brittain's  
Case.

Rot. Parl. 3; E. 1.  
Rot. 6. Rob. de Ros

de werkes Case.  
8 E. 3. 20.

38 E. 3. 31. a.  
Parl. 4 R. 2. nu.

17, 18. &c.  
5 R. 2. Trial 54.

Hil. 18 E. 3. co-  
ram rege. Rot.

145. Eborum.  
43 Aff. 28. 42 Aff.

29.  
Gilbert de M. was

a Scor.  
Rot. Parl. 7 R. 2.

nu. 15. 17, 24.  
7 H. 4. 47. Cust.

de Norm. ca. 73.  
6 Vid. 13 Eliz.

Dier. 298.

By the said Statute of 13 Eliz. cap. 1. it is enacted, declared, and established, That during the natural life of Queen Elizabeth, if any within the Realm or without, should compass, imagine, invent, devise, or intend to levy war against her Majesty, within this Realm, or without, and the same declare by writing, or word, &c. that it should be High Treason: So during the life of the Queen, a conspiracy to levy war was High Treason, though no war were levied; and upon that Law, Bradshaw, Burton, and others were attainted of High Treason, for conspiracy only to levy war. But it was resolved by all the Justices, that it was no Treason within the Statute of 25 E. 3. as hath been said. The words in this Law are [levie guerre:] An actual Rebellion or Insurrection is a levying of war within this Act, and by the name of levying war is to be expressed in the Indictment. If any with strength and weapons invasive, and defensive, doth hold and defend a Castle or Fort against the King and his power, this is levying of war against the King within this Statute of 25 E. 3.

It was resolved by all the Judges of England in the reign of King H. 8. that an Insurrection against the Statute of Labourers, for the inhansing of salaries and wages, was a levying of war against the King, because it was generally against the Kings Law, and the offenders took upon them the reformation thereof, which Subjects by gathering of power ought not to do. It was specially found, that divers of the Kings Subjects did minister and yield victuals to Sir John Old-castle Knight, and others, being in open war against the King, and that they were in company with them in open war; but all this was found to be pro timore mortis, & quod recesserunt, quam cito potuerunt: and it was adjudged to be no Treason, because it was for fear of death. Et actus non facit reum, nili mens sit rea. And therefore this in them was no levying of war against the King within this Act.

¶ Ou soit adherent as enemies nostre seigniour le roy, a eux do-  
nant aide & comfort en son roialme & aylors.]

¶ Adherent.] a This is here explained, viz. in giving aid and com-  
fort to the Kings enemies within the Realm or without: Delivery or surren-  
der of the Kings Castles or forts by the Kings Captain thereof to the Kings  
enemy within the Realm or without for reward, &c. is an adhering to the  
Kings enemy, and consequently Treason declared by this Act. b A. is out of  
the



the Realm at the time of a Rebellion within England, and one of the Rebels flee out of the Realm, whom A. knowing his Treason doth aid or succour, this is no Treason in A. by this branch of 25 E. 3. because the traitor is no enemy, as hereafter shall be said; and this Statute is taken strictly.

**[ As enemies. ]** Inimicus in legal understanding is hostis, for the Subjects of the King, though they be in open war or rebellion against the King, yet are they not the Kings enemies, but traitors; for enemies be those that be out of the allegiance of the King. If a Subject join with a foreign Enemy and come into England with him, he shall not be taken prisoner here and ransomed, or proceeded with as an enemy shall, but he shall be taken as a traitor to the King.

**d** An Enemy coming in open hostility into England, and taken, shall be either executed by Marshall Law, or ransomed; for he cannot be indicted of Treason, for that he never was within the protection or ligeance of the King, and the Indictment of Treason saith, Contra legeantiam suam debitam.

**e** David Prince of Wales levied war against E. 1. This was Treason, for that he was within the homage and ligeance of the King, and had judgement given against him as a traitor, and not as an enemy. And albeit in many precedents of Indictments Subjects that be Rebels, and Traitors, &c. be called proditores & inimici; yet within this Statute they are not inimici.

**f** In the Duke of Norfolk's Case the question was, a league being between the Queen of England and the King of Scots, whether the Lord Herise and other Scots in aperto praelio burning and wasting divers Towns in England without the assent of the King, were enemies in Law within this Statute, and resolved that they were. **g** See more hereafter in this third part of the Institutes. cap. 49. of Piracy, &c. upon the Statute of 28 H. 8. cap. 15.

**On per ailors. ]** That is to say, out of the Realm of England. But then it may be demanded, how should at this time this foreign Treason be tried? And some **b** of our Books do answer, that the offender shall be Indicted and tried in this Realm where his Land lyeth, and so it was adjudged in 2 H. 4. But now by the Statute of 35 H. 8. cap. 2. (which yet remains in force) All offences made or declared, or hereafter made or declared Treasons, misprisions of Treason, and concealments of Treason, committed out of the Realm of England, shall be inquired of, heard, and determined, either in the Kings Bench or before Commissioners in such Shire as shall be assigned by the King. If it be before Commissioners, it hath been commonly used, that the King doth write his name in the upper part of the Commission. But in the Case of Patrick O Cullen an Irish man, the Queen did put her Signature to the Warrant to the Lord Keeper, and not to the Commission: \* and it was holden by the Justices that the one way and the other was a sufficient assignement by the King within the Statute of 35 H. 8.

**i** It was resolved by all the Judges of England, that for a Treason done in Ireland the offender may be tried by the Statute of 35 H. 8. in England, because the words of the Statute be, All Treasons committed out of the Realm of England, and Ireland is out of the Realm of England. And so it was resolved in Sir John Parrots Case. And our word here [per ailors] is as much as out of the Realm of England. See Pasch. 2 H. 4. coram Rege Rot. 8. Salop. Treason in Wales.

**k** All Treasons done upon the Sea shall be inquired, heard, and determined in such Shires and places of the Realm as shall be limited by the Kings Commission, in like form and condition, as if the same had been done upon the Land, &c. after the common course of the Laws of this Land. And by the preamble it appeareth, that it could not be tried by the Common Law, but by the Civil Law before the Lord Admiral. See hereafter in the exposition of the Statute of 28 H. 8. cap. 15. & infra, cap. 49.

See hereafter.  
35 H. 8. cap. 2.  
443 Ail. 28. 29.  
33 H. 6. 1.  
19 E. 4. 6. a. & b.  
4 Mar. Treason.  
Br. 2.  
1 Mar. ibid. 24.  
21 E. 3. 23.  
12 Ail. p. 49.  
13 El. Dier 298.  
Ex libro de Guilt.  
fin. de Perkin  
Werbeck.  
d Dier 4 Mar.  
fo. 145. a.  
Lib. 7. fol. 6. b.  
Calvins Case.  
f Fleta lib. 1. c. 16.  
f Mich. 13. & 14.  
Eliz. per Justice.  
19 E. 4. 6. b.  
18 H. 6. cap. 4.  
20 H. 6. cap. 1.  
g 27 E. 3. cap. 13.  
31 H. 6. cap. 4.  
7 E. 4. 14. 13 E. 4.  
9. 21 E. 3. 16. 17.  
Reg. ft. 125. Fit.  
N. B. 114.  
b 4 Ail. p. 15.  
5 R. 2. ubi supra.  
19 E. 4. 6. b.  
Dier 3. Mar. 13.  
Pasch. 2 H. 4. coram rege.  
Rot. 8. Wallia.  
35 H. 8. cap. 2.  
3 Mar. ubi supra.  
13 Eliz. Dier. 298.  
Stanford Pl. Cor.  
fo. 50. a & b. See  
the first part of  
the Institutes, 440.  
\* Hil. 36 Eliz.  
in the Case of Patrick O Cullen,  
for a Treason at  
Brussels in partibus Marinis.  
i 33 El. in Ornick's  
case lib. 7.  
f. 23. Calvins case  
Vid. Dier Mich.  
19 & 20. Eliz. fo.  
360. lib. 11. fo. 63.  
in Doct. Fosters  
Case.  
k 28 H. 8. cap. 15.  
This Act concerning  
Treasons is  
not taken away by  
the Statute of 35  
H. 8. cap. 2.  
Vide infra cap. 49.  
fol. 181. of Piracy,  
&c.  
Vid. 5. Eliz. 5. c. 5.



g See 1 E. 6. ca. 12.  
the last clause.  
5 E. 6. ca. 11.  
1 & 2 Ph. & Mar.  
ca. 10. & 11.  
1 Eliz. cap. 6.  
13 Eliz. cap. 1.  
Stranf. pl. Cor.  
89. & 164.  
Br. coron. 4 Mar.  
220.  
Dier 2 Mar. fo. 99.

¶ Et de ceo provablement soit attaint per overt fait per gents de lour condition. ] In this branch four things are to be observed. First this word [provablement] probably, that is, upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit, but upon good and sufficient proof. And herein the Adverb [provablement] probably, hath a great force, and signifieth a direct and plain proof; which word the King, the Lords, and Commons in Parliament did use, for that the offence was so heinous, and was so heavily, and severely punished, as none other the like, and therefore the offender must probably be attained, which words are as forcible, as upon direct and manifest proof. Note, the word is not [probably] for then commune argumentum might have served, but the word is [provably] be attained.

\* Rot. parl. an. 33.  
E. 1. Rot. 6. Jo.  
Salvyns case.  
h 43 Ass. 28.  
8 E. 3. 20.  
7 H. 4. 27. 34 E. 3.  
cap. 12. Lib. 4.  
fo. 57. the Sadlers  
case.  
\* 19 H. 6. cap. 1.

2. This word [attaint] necessarily implieth that he be proceeded with, and attained according to the due course, and proceedings of Law, and not by absolute power, or by other means, \* as in former times had been used. b And therefore if a man doth adhere to the enemies of the King, or be slain in open war against the King, or otherwise die before the attainder of Treason, he forfeiteth nothing, because (as this Act saith) he is not attained: wherein this Act hath altered that, which before this Act, in case of Treason was taken for Law. And the Statute of 34 E. 3. cap. 12. saves nothing to the King, but that which was in esse, and pertaining to the King at the making of that Act. And this appeareth by a Judgment in Parliament in Anno 29 H. 6. cap. 1. That \* Jack Cade being slain in open Rebellion could no way be punished, or forfeit any thing, and therefore was attained by that Act of High Treason.

Vide supra verbo  
¶ Mort. fo. 6.

Vide 21 R. 2. cap.  
3. but it is repeated by 1 H. 4. ca. 3.  
\* Hil. 36 Eliz.  
Doctor Lopes  
case 13 Eliz. c. 1.  
Brook. Treason  
24.  
Hil. 1. Ja. R. Lo.  
Cobhams Case.

3. ¶ Per overt fait, ] per apertum factum. This doth also strengthen the former exposition of the word [provablement] that it must be probably, by an open act, which must be manifestly proved. As if divers do conspire the death of the King, and the manner how, and thereupon provide weapons, powder, \* poison, assay harnesse, send letters, &c. or the like for execution of the conspiracy. Also preparation by some overt act, to depose the King, or take the King by force, and strong hand, and to imprison him, until he hath yielded to certain demands, this is a sufficient overt act to prove the compassing, and imagination of the death of the King: for this upon the matter is to make the King a Subject, and to dispossess him of his Kingly office of Royal government. And so it was resolved by all the Judges of England, Hil. 1. Jac. Regis, in the case of the Lo. Cobham, Lord Gray, and Watson and Clark Seminary Priests: And so had it been resolved by the Justices, Hil. 43 Eliz. in the case of the Carls of E. and of S. who intended to go to the Court where the Queen was, and to have taken her into their power, and to have removed divers of her Counsel, and for that end did assemble a multitude of people: this being raised to the end aforesaid was a sufficient overt act for compassing the death of the Queen. And so by woful experience in former times it hath fallen out, in the cases of King E. 2. R. 2. H. 6. & E. 5. that were taken, and imprisoned by their subjects. And this is made more plain by the legal form of an indictment of Treason: For first it is alledged according to this Act, Quod \* proditorie compassavit, & imaginatus fuit mortem & destructionem dñi regis, & ipsum dom. regem interficere, &c. In the second part of the Indictment is alledged the overt act, & ad illam nephandam, & proditoriam compassationem, imaginationem, & propositum suum perficiend' & perimplend', and then certainly to set down the overt fact for preparation to take, and imprison the King, or any other sufficient overt act, which of necessity must be set down in the Indictment. Hereby it appeareth how insufficient many Indictments were of High Treason, where in it was generally alledged, that per apertum factum compassavit, & imaginatus fuit mortem dom. Regis, &c. \* For example, Termino Mic. anno 5 E. 6. Edward Duke of Somerset was Indicted before Commissioners of Oyer and Terminer in London, quod ipse Deum præ oculis suis non habens, sed infligatione diabolica

\* In ancient time  
traditione & felonice. parl. 33 E. 1.  
rot. 6. Robert de  
Ros his case, but  
now proditorie is  
necessarily required.  
Vide Britton fo.  
16. & 19. 1 Mar.  
Br. Treason 24.  
\* Ter. Mic. 5 E. 6.  
Lib. Intr. Coke  
fo. 482.  
Sanguinis O maledicta sit, &c.



lica seductus, apud Holborne in parochia Sancti Andreæ infra civitatem London, viz. 20 die Aprilis anno Regni domini Regis Edw. sexti quinto, & diversis diebus & vicibus antea & postea false, maliciose, & proditorie \* per apertum factum \* circumvixit, compassavit, & imaginavit cum diversis aliis personis prædictum dominum Regem de statu suo regali deponere & deprivare, &c. Which Indictment, and all others of the like form were against Law, as hath been said, and of the matter of this Indictment that noble Duke was by his Peers found not guilty. But then it may be demanded, for what offence he had judgment of death, and 2. what Law made it an offence. The offence appeareth in his Indictment, for the former part thereof contained High Treason whereof he was acquitted, and the latter part contained one only offence of felony (whereof he was found guilty) in these words, Et ulterius Juratores præd. præsentant, quod præfatus Edwardus dux Somerset Deū præ oculis suis non habens, sed instigatione diabolica seductus 20 Maii An. regni dicti Dom. Regis Edwardi sexti quinto supradicto, ac diversis aliis diebus & vicibus antea & postea apud Holborn in præd. paroch. Sancti Andreæ in civitate London, & apud diversa alia loca infra civitatem London præd. felonice ut felo dict. Dom. Regis per aperta verba & facta procuravit, movit, & instigavit complurimos subditos ipsius domini Regis ad insurgendum, & apertam rebellionem & insurrectionem infra hoc regnum Angliæ movend' contra ipsum dominum Regem, & ad tunc & ibid. felonice ad capiendum & imprisonandum prænobilem Johannem comitem Warwick de privato consilio domini Regis ad tunc existent', contra pacem dicti domini Regis, coronam & dignitatem suam, & contra formam Statuti in hujusmodi casu editi & provis. The Statute whereupon this Indictment was intended to be grounded, was the branch of the Statute of 3 & 4 E. 6. by which it is provided, [That if any person or persons by ringing of any Bell, &c. or by malicious speaking or uttering of any words, or making any Outcry, &c. or by any other deed or act shall raise or cause to be raised or assembled any persons to the number of 12 or above, to the intent that the same persons should do, commit, and put in ure any of the acts or things above mentioned (whereof to take and imprison any of the Kings most honourable Privie Counsel was one) and the persons to the number of 12 or above so raised and assembled after request and commandment (in such sort as in that Act is prescribed) shall make their abode and continue together, as is aforesaid, (in the Act) or unlawfully perpetrate, do, commit, or put in ure any of the acts or things abovesaid, that then all and singular persons, by whose speaking, deed, act, or any other the means above specified any persons to the number of 12 or above, shall be raised or assembled for the doing, committing, or putting in ure any of the acts or things above mentioned, shall be adjudged for his so speaking or doing a felon, and suffer execution of death as in case of Felony, and shall lose his benefit of Sanctuary and Clergy.] Hereby it doth manifestly appear, that the truth concerning this Noblemans attainder, and execution in divers things, is contrary to the vulgar opinion, and some of our Chronicles, and in some points contrary to Law. First, that for the Felony made by the said branch of the said Act he could not have had his Clergy, for Clergy in that case is expressly ousted by the said Act. 2. That he was not Indicted for going about, &c. the death of the Earl of Warwick then of the Kings Privie Counsel, but only for his taking or imprisonment, and therefore could not be Indicted upon the Statute of 3 H. 7. as some have imagined. 3. That the Indictment is altogether insufficient, for it pursueth not the words or matter of the said branch of the said Act, as by comparing of them it manifestly appeareth; which (we being desirous that truth may appear in all things) we have thought good upon this occasion to add for advancement of truth. 4. That being but attainted of Felony, he could not by Law be beheaded, as elsewhere we have shewed. And this Act that created the Felony saith, that such a Felon shall suffer execution of death, as in case of Felony. 5. Lastly, this whole Act was justly holden to be a doubtful and dangerous Statute, and therefore was deservedly repealed. And after the fall of this Duke, see the preamble of the Statute of Subjunct of 7 E. 6.

\* Per apertum factum.

Vid. hereafter c. 5. de Heresie, general Indictments against Lollards, &c.

The residue of the Indictment of the Duke of Somerset.

To take and imprison one of the Privie Counsel. Contra formam Statut.

3 & 4 E. 6. cap. 9

3 H. 7. ca. 14.

Lib. 9. fo. 114. in Seignior Sanchez's case.

1 Mar. cap. 12.

1 Eliz. ca. 16.

7 E. 6. ca. 12.

And



And now to return to Cases of High Treason. If a man be arraigned upon an Indictment of High Treason, and stand mute, he shall have such judgment, and incur such forfeiture, as if he had been convicted by Verdict, or if he had confessed it. For this standeth well with this word provablement, for fatetur facinus, qui judicium fugit: but otherwise it is in case of Petit Treason, Murder, or other Felony.

If a Subject conspire with a forraign Prince beyond the Seas to invade the Realm by open Hostility, and prepare for the same by some overt act, this is a sufficient overt act for the death of the King, for by this Act of Parliament in that Case there must be an overt act. \* Qui capit, aut saluti Regis perfidiose fide solus, fide servis aut sicariis mercede conductis stipatus infidiabitur, vita & fortunis ejus omnibus privator. So as thereby an overt act was required.

The composition and connexion of the words are to be observed, viz. [thereof he attainted by overt deed.] \* This relateth to the several and distinct Treasons before expressed, (and specially to the compassing and imagination of the death of the King, &c. for that it is secret in the heart) and therefore one of them cannot be an overt act for another. As for example: a conspiracy is had to levy War, this (as hath been said, and so resolved) is no Treason by this Act until it be levied, therefore it is no overt act or manifest proof of the compassing of the death of the King within this Act; for the words be (de ceo &c.) that is, of the compassing of the death. For this were to confound the several Classes, or membra dividentia, & sic de cæteris, &c.

a Divers latter Acts of Parliament have ordained, that compassing by bare words or sayings should be High Treason; but all they are either repealed or expired. And it is commonly said, that bare words may make an Heretick, but not a Traytor, without an overt act. And the wisdom of the makers of this Law would not make words only to be Treason, seeing such variety amongst the witnesses are about the same, as few of them agree together. But if the same be set down in writing by the Delinquent himself, this is a sufficient overt act within this Statute.

b Cardinal Poole, albeit he was a Subject to H. 8. and of the Kings blood, (being descended from George Duke of Clarence, Brother to King E. 4.) yet he in his Book of the Supremacy of the Pope, written about 27. H. 8. incited Charles the Emperour, then preparing against the Turk, to bend his force against his natural Sovereign Lord and Countrey; the writing of which Book was a sufficient overt act within this Statute: and to move the Emperour the rather in that Book, he made H. 8. almost as ill as the Turk, in these words, In Anglia sparsum nunc est hoc semen, ut vix a Turcico internosci queat, idque autoritate unius coaluit.

c In the Preamble of the Statute of 1 Mar. concerning the repeal of certain Treasons, &c. It is agreed by the whole Parliament, that Laws justly made for the preservation of the Commonwealth without extream punishment, are more often obeyed and kept, then Laws and Statutes made with great and extream punishments; and in special such Laws and Statutes so made: whereby not only the ignorant and rude unlearned people, but also learned and expert people minding honesty, are oftentimes trapped and snared, yea, many times \* for words only, without other fact or deed done or perpetrated: therefore this Act of 25 E. 3. doth provide, that there must be an overt deed. But words without an overt deed are to be punished in another degree, as an high misprision.

[Per gents de lour condition.] That is, per pares, or their equals, whereof we have spoken before in the exposition of the 29 Chapter of Magna Charta. Verb. per judicium parium suorum, and more shall be said hereafter. This Branch (per gents de lour condition) extendeth only to a conviction by Verdict, whereof the Statute particularly speaketh; but yet where the party Indicted confesseth the offence, or standeth mute, he shall have Judgment as in case of High Treason. For this branch being affirmative, is taken cumulative

and

13 Eliz. Dier 298.

13 Eliz. cap. 1.

Nota bene. Vide

supra verbo Mort.

\* Inter leges Alveredi, cap. 4.

\* So resolved by the Justices Pasch. 35 Eliz. which we heard and observed.

a 26 H. 8. cap. 13.

1 E. 6. cap. 13.

1 & 2 Ph. & Mar.

cap. 9, 10.

1 Eliz. cap. 6.

13 Eliz. ca. 1. &c.

14 Eliz. cap. 1.

b See the fourth part of the Institutes, ca. 26.

Brook Treason 24.

writing of Letters.

c 1 Mar. cess. 1. c. 1.

See the Statute

of 3 H. 7. hereafter,

cap. 4. directly in the point

by the judgment

of the Parliament.

Nota, this Act of

25 E. 3. saith, per

overt fact, per

apertum factum,

and not per apertum

dictum, by

word or confession.

See 25 H. 8. c. 12.

Eliz. Barton,

Edw. Locking,

and others attainted

by Parliament

for divers words

and conspiracies,

which being not

within this Act

without an overt

act they could not

be attainted by

the Common law.

\* Nota.

d See in the chap-

ter of Misprision.

e Mag. Car. ca. 29.



and not privative. And therefore seeing upon confession, or standing mute, the judgment in case of High Treason was given at the common Law, this Act being as it hath been said, affirmative, taketh not away the same: And (to say once for all) the clause hereafter of restraint of like cases, &c. extends only to offences, and not to trials, judgments, or executions.

[ Si home counterface le grand Seale. ] All our ancient Authors agree that this was High Treason by the common Law, and for this offence his judgment was to be drawn, hanged, and quartered, at the common Law, as in other cases of High Treason, (the counterfeiting of the Kings mony excepted.) See the second part of the Institutes. W. 1. cap. 5.

\* In ancient time every Treason was comprehended under the name of felony, but not e contra. And therefore a pardon of all felonies was sometime allowed in case of High Treason. But the Law is, and of long time hath been otherwise holden: and if the Indictment were felonice, and not proditorie, (for the King may lessen the offence, if it please him) then the pardon of felonies is good at this day, for no Indictment can be of High Treason without this word [proditorie:] and in qualibet prodicione implicatur feloniam, quia in quolibet brevi de exigendo super quolibet indictamento de prodicione proclamator facit sic, L. B. An exigent on thy head of Treason and Felony.

A compassing, intent, or going about to counterfeit the great Seal is no treason, but there must be an actual counterfeiting, also it must be to the likeness of the Kings great Seal; the words be, Counterface le grand seale le Roy.

Now it is to be seen what shall be said a forging, or counterfeiting of the great Seal. If the Lord Chancellor, or Lord Keeper put the great Seal to a Charter &c. without warrant, this is no Treason, because the great Seal is not counterfeited. But it seemeth by Britton fo. 10. b. that it was Treason at the common Law, and of that opinion is Fleta fo. 29. a. but it is no Treason now (without question) by the negative clause of this Act.

If a man take war lawfully imprinted with the great Seal from one patent, and fix it to a writing purporting a grant from the King, there have been divers opinions in this case what the offence is, which we will rehearse.

In 40 Ass. which was about 15 years after the making of this Act, it was not holden High Treason, but a great misprision, for that it is no counterfeiting of a new, but an abuse of the true great Seal.

In 42 E. 3. the Abbot of Wyer caused Rob. Rigge his Commoigne to raise a Charter of R. 1. and put out the Danoz of Fisettruda, and in place thereof put in Esleghe. And this offence was heard, and sentenced before the King and his Council in the Star-Chamber, as a great offence and misprision: for if it had been High Treason, it should have had another trial, and yet this was a great abuse of the great Seal.

2 H. 4. The taking of the Great Seal from one Patent, and fixing it to a Commission to gather money, &c. was adjudged to be such an offence, as the offender had judgment to be drawn, and hanged. The record of which case we have perused, and the effect thereof is this. The party is Indicted generally for counterfeiting of the great Seal, whereunto he pleaded not guilty, and the Jury found him not guilty of the counterfeiting of the great Seal, as was supposed by the Indictment, and found further specially, that he took the great Seal from one Patent, and put it to the Commission, and that the party put the same in execution, and there judgment was given, that he should be drawn and hanged: which (whatsoever the offence was) ought not to have been given upon this verdict, the Jury finding him not guilty of the offence alleged in the Indictment: And besides the judgment is such, as is given in case of Petit Treason, and not of High Treason. Whereby it appeareth how dangerous it is for any to report a case by the ear, specially concerning Treason, unless he had advisedly read the Record: for (as I take it) the misreport of this case hath hatched errors, and he mistook the judgment, if it had been High Treason, for then it should have been drawn, hanged, and quartered.

Bract. l. 3. fo. 118.  
Brit. fo. 10. &c.  
Bract. l. 5. fo. 414.  
Fleta l. 1. ca. 21  
Mirror ca. 1. §. 6.  
de fauonerie.  
29 Ass. pa. 49.  
\* 1 E. 3. tit. Chart.  
F. 13. 22 Ass. Pl.  
49.

2 R. 3. 9.

3 H. 7. 10. as

40 Ass. p. 33.

Ror. Claus.  
42 E. 3. nu. 8. in  
Coro.

2 H. 4. fo. 25.

Errores ad sua  
principia referre,  
est refellere.  
To bring errors  
to their begin-  
ning, is to see  
their last.\*

37 H. 8.



37 H. 8. Br.  
Treason.

Stanf. Pl. Coron.  
fo. 3. c.  
Bracton agreeth  
with it. *Ubi supra.*  
Leaks Case. Hil.  
4. Ja. R.

40 Ass. 33.

42 E. 3. Rot. Cl.  
*Ubi supra.*

37 H. 8. Br. dev.

a Fleta l. 1. ca. 22.

Britton fo. 10. b.

See before. fo. 15.

b Rot. Parl. Hil.

18 E. 1. fo. 92. nu.

125.

c 1 Mar. cap. 6.

1 & 2 Ph. & Mar.

ca. 11.

\* 19 H. 6. 47.

3 H. 7. 10. Stanf.

Pl. Coron. 3. vide

postea ca. 64.

principall & access.

See Mich. 13 & 14

Eliz. Dier : 96.

Coniers Case.

d See Mar. Par.

Anno 34 H. 3.

pag. 753. de pecu-

nia approbata &

reprobata.

Et Walsingham

28 E. 1. Anno

Dom. 1300. stat.

31 E. 1. de weights

& Measures.

Raft. 7.

e Ver. Magna

Charta. ca. Itin.

fo. 151. a.

22 Ass. p. 49.

3 H. 7. 10. 25 E. 3.

42. b. Coro. 130.

f 6 H. 7. 13.

1 R. 3. 1.

g Walf. Hyp.

Neustrie pa. 69.

1278. 6 E. 1.

b 3 H. 7. 10. a. b.

37 H. 8. Br. tit. Treason. A Chaplain had fixed such a great Seal to a Patent of dispensation with non-residence, and this was holden a misprision, and not High Treason, for it was an abuse of the great Seal, and no counterfeiting of it. Stanford saith that it was adjudged in his time according to the book of 2 H. 4. Et sic ex errore sequitur error.

G. Leak a Clerk of the Chancery joyned two clean parchments fit for Letters Patents so close together with mouth glew, as they were taken for one, the uppermost being very thin, and did put one Label through them both, then upon the uttermost he writ a true Patent, and got the great Seal put to the Label, so the Label and the Seal were annexed to both the Parchments, the one written, and the other blank : he cut off the glewed skirts round about, and took off the uppermost thin Parchment (which was written, and was a true and perfect Patent) from the Label, which with the great Seal did still hang to the Parchment, then he wrote another Patent on the blank Parchment, and did publish it as a good Patent. Hereupon two questions were moved. 1. Whether this offence be High Treason or no. 2. If it be High Treason, then whether he may be Indicted generally for the counterfeiting of the great Seal, or else the special fact must be expressed. And upon conference had between the Judges, upon great advisement and consideration it was in the end, concerning the first point, resolved by the Justices (saving a very few) upon the authorities aforesaid, and for that it was no counterfeiting of the great Seal within this Statute, that this offence was neither High Treason, nor Petit Treason, because it is not within either of the branches of this Statute, but it is a very great misprision, and the party delinquent lieth at this day. As to the 2. point it was resolved, that if the special matter had amounted to counterfeiting of the great Seal in Law within this Act, then he might have been generally Indicted of High Treason for counterfeiting the great Seal. As if a man in an affray kill a Constable that comes to keep the Kings peace without any express malice prepensed, this is murder in Law, and yet the delinquent may be generally Indicted of murder by malice prepensed.

And a Fleta who wrote before this Act telleth us, that *Crimen falsi dicitur, cum quis illicitus (cui non fuerit ad hoc data autoritas) de sigillo regis raptio vel invento, & brevia cartasque consignaverit.* But whatsoever offence it was before the making of this Statute, it is after this Statute no High Treason, because it is no counterfeiture of the great Seal, but a misfeasor thereof.

Qui b convictus fuerit pro falsatione sigilli dom. regis, quod tradatur Episcopo Sarum, qui eum petiit ut clericum suum sub poena & in forma qua decet, quia videtur concilio quod in tali casu non admittenda est purgatio, &c. Hereby it should appear that in those days a man might have had his Clergy for this offence; and therefore, as some hold, it was not then holden to be High Treason: & herein also is the preamble of this Act, concerning divers opinions in case of treason, verified.

This Statute naming the great Seal and privy Seal, the forging and the counterfeiting of the privy signet, or of the signe manuell, was not within this Statute. But by the c Statute of 1 Mar. it is made High Treason in both cases. Albeit in this Act there is no mention made of \* aiders and consenters to this counterfeiting, yet they are within the purview of this Statute, for there be no accessaries in High Treason.

[Ou sa d monye.] e This was Treason by the common Law, as it appeareth by all the said ancient Authors, *ubi supra* (verbo, Si home counterface le grand Seal) and therefore the opinion in 3 H. 7. is holden for no Law, that it was but Felony before this Act. f The forging of the Kings Coin is High Treason, without utterance of it, for by this Act the counterfeiting is made High Treason. See the second part of the Institutes. W. 1. cap. 15. g See Thom. Wallingham, Hypodigme Neustrie. An. Dom. 1278. Judei pro tonsura monetæ in magna multitudine ubique per Angliam suspenduntur, &c.

b Si ipse qui facit monetam autoritate regis, &c. illam facit minus in pondere vel



vel allaiata, viz. Alcumino vel alio falso metallo contra ordinationem, &c. This is there holden to be High Treason, and by that Book taken for a counterfeiter of the Kings money within the Purview of this Statute. <sup>a</sup> And herewith agreeth Britton, who saith, Des faucercs q'ount nostre monye counterfeit ou plus de alaye mise in nostre monye, q' nuster, ne ferroit solong; le forme & usage de nostre Realme.

<sup>b</sup> Ordeine fuit q' nul Roy de cest realme ne puit changer sa monye, ne impairer, ne amender, ne auter monye faire q' de ore & argent, sans l'assent de tous les Counties. It was ordained, that no King of this Realm might not change his money, nor impair, nor amend the same, nor other money make then of Gold or Silver, without assent of Parliament.

<sup>c</sup> Clipping, washing, and filing of the money of this Realm, was no counterfeiting of it within this Act. And therefore being a like Case, it was declared by Parliament in Anno 3 H. 5. cap. 6. to be High Treason; but that Act being repealed by 1 Maria the Statute of 5 Eliz. cap. 11. hath <sup>d</sup> declared, that clipping, washing, rounding, or filing, for wicked lucre and gain, &c. to be High Treason. And by the Statute of 18 Eliz. it is declared, That if any person for wicked lucre or gains sake, shall by any art, ways, or means whatsoever, impair, diminish, falsifie, scale, or lighten the Kings money, &c. it is High Treason, for being a like case, it was to be declared by Parliament.

Forging or counterfeiting of forraign money, which is not currant within the Realm, is misprision of Treason, and the offender shall forfeit, as for concealment of High Treason.

[ Sa monye. ] <sup>g</sup> This extendeth only to the Kings money coined within this Realm; and therefore after this Statute, if a man had counterfeited the money of another Kingdom, though it were currant within this Realm, it was no Treason, until it was so declared by Parliament <sup>h</sup> in An. 1 Maria, and in An. 1 & 2 Ph. & M. and the said Acts of 5 El. & 18 El. do extend to forraign coin currant within this Realm. And it is holden, that at the making of this Statute of 25 E. 3. there was no money currant within this Realm, but the Kings own coin. <sup>i</sup> See the Statute called Statutum de moneta magnum, & Statutum de moneta parvum. And it is to be known, that if any do counterfeit the Kings coin contrary to this Statute of 25 E. 3. he shall have the punishment of his body, but as in case of Petit Treason, that is, to be drawn and hanged till he be dead, but the forfeiture of his Lands is as in other cases of High Treason, for this Statute is but a declaration of the Common Law, and the reason of his corporal punishment is, for that in this case he was only drawn and hanged at the Common Law, but a woman in that case was to be burnt.

<sup>l</sup> The Abbot of Miffenden in the County of Buckingham for counterfeiting and refection of the Kings money, was adjudged to be drawn and hanged, and not quartered. The want of obseruation of the said distinction hath made some to err in their judgment. Nota. This Act of 25 E. 3. maketh no expession of the judgment; therefore such judgment as was at the Common Law either in case of High Treason or Petit Treason must be given.

But if one be attainted for diminishing of the Kings money upon any of the Statutes made in Queen Maries time, or in the time of Queen Elizabeth, because it is High Treason newly made, the offender shall have judgment as in case of High Treason, which judgment you may see in the first part of the Institutes. Sect. 747.

<sup>m</sup> And when a woman committes High Treason and is quick with child, she cannot upon her arraignment plead it, but she must either plead not-guilty, or confesse it: and if upon her plea she be found guilty, or confesse it, she cannot alledge it in arrest of judgment, but judgment shall be given against her: and if it be found by an inquest of Parrons that she is quick with child, (for priviment enlent will not serve) it shall arrest, and respice execution till she be delivered, but she shall have the benefit of that but once, though she be again quick

<sup>a</sup> See inter leges Athelstani, ca. 18. Canuti, cap. 61. Britton cap. 5. fo. 10. b.

See the Mirror, ca. 1. §. 6. De la mony falsifie acc' with 3 H. 7. and ca. 5. §. 1. and Fleta ca. 22. acc'. <sup>b</sup> Mirror, ca. 1. §. 3. inter Artic. peti vels royes ordeinus.

Rot. Par. 17 E. 3. nu. 15. Vide hic postea, cap. 1. 45 E. 3. ca. 13. 9 H. 5. cap. 11. Stat. 1.

See the second part of the Institutes, ca. 20. Artic. super Carr. and the Exposition on upon the same.

<sup>c</sup> 3 H. 5. ca. 6. 1 E. 6. cap. 12. 5 Eliz. cap. 11.

<sup>d</sup> Nota, for wicked lucre and gain.

<sup>e</sup> 18 Eliz. cap. 1. <sup>f</sup> 14 E. 2. cap. 3.

<sup>g</sup> See hereafter, cap. Principal & Accessory.

<sup>h</sup> 1 Mar. cap. 6. 1 & 2 Ph. & Mar. cap. 11.

<sup>i</sup> Vet. Mag. Carta, part. 2. fol. 38, 39, 40.

<sup>k</sup> Fleta lib. 1. c. 22. who wrote before this Statute, which is but a Law Declaratory, as it appeareth before.

<sup>l</sup> 23 Ass. p. 2. Dier 6 Eliz.

Term. Tr. M. S. pro tonsura monete tra-

be & pend. Tr. 24 H. 8. in Justice Spilmans Reports, accord.

<sup>m</sup> Mich. 31 E. 3. coram rege.

Rot. 55. Euck. within 6 years after making of our Statute.

<sup>n</sup> 15 E. 3. 42 b. Cor. 130. 21 Ass.

p. 2. 22 Ass. p. 71. 22 E. 3. Cor. 253.

12 All. p. 11. 8 E. 2. Cor. 410.



with child : so as this respit of execution for this cause is not to be granted, only in case of Felony, whereof Justice Stanford speaketh, but in case of High Treason, and Petit Treason also.

*Vid.* hereafter,  
cap. 30.  
Rot. Par. 17 E. 3.  
nu. 15.

7 H. 7. 10.

Lib. 7. Calvins  
case, *ubi supra*.

3 H. 7. 10.

¶ Si home port faux money en cest roialme, counterfeit au money d'Anglitterre, & sachant le money estre faux, &c. ] By this branch six things are to be observed. First, That the bringing in of counterfeit money, and not the counterfeiting is expressed in this word [apport.] Secondly, That it must be brought from a forraign Nation, and not from Ireland, or other place belonging to, or being a member of the Crown of England, and so it hath been resolved, so wary are Judges to expound this Statute concerning Treason, and that in most benigne sense : For albeit Ireland be a distinct Kingdom, and out of the Realm of England to some purposes, as to Protections and Fines levied, &c. as hath been said : yet to some intent it is accounted as a member of or belonging to the Crown of this Realm. And therefore a Writ of Error is maintainable here in the Kings Bench of a judgment given in the Kings Bench in Ireland, so as the Judges did construe this Statute not to extend to false money brought out of Ireland. Thirdly, It must be to the similitude of the money of England. Fourthly, That the bringer of it into this Realm, must know it to be counterfeit. Fifthly, Uttering of false money in England, though he know it to be false and counterfeit to the likeness of the Coin of England, is no Treason within this Statute, unless he brought it from a forraign Nation, for the words be, si home apport faux money en cest realme. But if money false or clipped be found in the hands of any that is suspicious, he may be imprisoned until he hath found his warrant, per statutum de moneta magn' vet. Mag. Cart. fo. 38. 2 parte. Lastly, He must merchandize therewith, or make payment thereof, expressed in these words, Pur merchandizer, ou paiement faire in deceit nostre Seignior le Roy & son people. See more, De moneta regis, and of the declaration thereof in The second part of the Institutes, in Artic' super cartas. cap. 20.

¶ Si home tuast Chancelour, Treasurer, ou Justice nostre seignior le Roy del un banque ou dest auter, Justice in Eire, ou d'alisies & tous auters Justices assignes doier & terminer esteant en leur place seasant leur office. ]

In this case albeit one intend to kill any of these here named in their place, and doing their office, and thereupon strike or wound any of them, this is no Treason : For our Statute saith, Si home tuast Chancellor, &c. If a man kill the Chancelour, &c. For if it be Treason, death must ensue. And the reason wherefore it is Treason in these cases is, because sitting judicially in their places (that is, in the Kings Courts) and doing their office in administration of Justice, they represent the Kings person, who by his Oath is bound that the same be done. And this Act extends only to the persons here particularly named, and to no other : and therefore extendeth not to the Court of the Lord Steward, or of the Constable and Marshal, nor to the Court of the Admiralty, or any other, nor to any Ecclesiastical Court ; Nay, it extends not to the High Court of Parliament, if any Member of the Lords House, or House of Commons be slain in his place, and doing his office, because it is casus omissus, and not mentioned in this Act. But in all those Cases it is wilful Murder, for the Law impliyeth malice.

¶ Et soit assavoir q in les cases suisnosmes doit eē adjudge Treason q se extend a nostre Seignior le Roy & sa royal Majestie : & de tiel Treason le forfeiture des Escheates appertient a nostre Seignior le Roy cibien des terres & tenements tenus des auters, come de luy mesme.

a ¶ Des terres & tenements tenus des auters come de luy mesme. ] This is an affirmance of the Common Law, and the reason thereof is, for that the offence is committed against the Sovereign Lord the King, who is the light and the life of the Commonwealth : and therefore the Law

a Rot. Parliam.  
20 E. 1. nu. 2.  
John de Britains  
case.  
3 Reg. 21. 15.  
See *inter leges*  
*Alveredi*, cap. 4.  
*ubi supra*. *Vita*  
& *fortunis omnibus*  
*privatur*.  
Cust. de Norm.  
ca. 14. 22 lib. Ass.  
pl. 49.

doth



doth give to the King in satisfaction of his offence, all the Lands, &c. which the offender hath, and that no subject should be partaker of any part of the forfeiture for this offence.

And where the words be [Lands and Tenements holden, &c.] yet the forfeiture extends to \* rents charges, rents seek, Commons, Corrodies, and other hereditaments which are not holden, for in case of High Treason the tenure is not material.

\* Brook Esch. 9.  
See hereafter,  
Verbo. Et de tiel  
manner de Treason,  
&c.

This clause hath 7 limitations. First, This Act extends not *b* to Lands in tale, (saving only for the life of Tenant in tale) but the forfeiture of escheats is to be understood of such Lands and Tenements, as he might lawfully forfeit. And these general words take not away the Statute of donis conditional *c* but latter Statutes give the forfeiture of estates in tale. 2. For doth this Act extend to uses, but \* latter Statutes do name uses. 3. *d* For to rights of actions, where the entrie is taken away, and so is the Law clearly holden at this day. 4. For to any conditions, but by a *e* latter Statute conditions, unless they be inseparably knit to the person, be given to the King. 5. For to rights of entry, where any was in the Lands *f* by title before the treason committed, but such a right of entry is since given by latter Statutes. 6. For to Lands or Tenements, or Rights *g* in autre droit, as in the right of the Church, nor to Lands in the right of a wife, but only during the coverture, and it extendeth to Land which the offender hath *b* for life, for the forfeiture of the profits during his life. 7. It extendeth not to \* a foundership of an house of Religion in Free almoign, for that is annexed to the blood of the Founder. Here goods and chattels be not named, but the forfeiture of them is implied in the judgement.

Otherwise it is in  
case of Petit Treason  
and Felony.  
*b* 7 H. 4. 32. See  
hereafter in the  
title of Praemunire.  
Verbo [des terres,  
&c.] Vid. 26 H. 8.  
cap. 13.  
*c* 26 H. 8. ca. 1.  
in fine. 33 H. 8.  
ca. 20. 5 & 6 E. 6.  
ca. 11.  
Lib. 7. fo. 11, 13.  
\* 33 H. 8. cap. 20.  
5 E. 6. ca. 11.  
*d* Lib. 3. fo. 210.  
7 H. 4. 6. &c.  
*e* 33 H. 8. c. 20.  
lib. 7. fo. 11. Ed.  
glefields case.

*i* Nota Lector, the said Acts of 26 H. 8. 33 H. 8. 5 and 6 E. 6. do yet remain in force, notwithstanding the said Statute of 1 Mar. as it hath been often adjudged and resolved, and namely Mich. 21 Ja. in the Erchequer Chamber in a writ of Error, upon a judgement given in the Erchequer, between Ratcliffe and the Lord Sheffeld, by all the Judges of England, and is agreeable to common experience.

*f* Englefields case  
*ubi supra*.  
*g* 5 E. 6. *ubi supra*.  
1 Mar. Dier 125.  
Dier. 12 El. 289.  
Temps H. 8. Br.  
Coron. 5.  
*b* 1 Mar. Dier 108.  
\* 24 E. 3. 33. 72.  
Corony Br. 5.  
Temps H. 8.

See more of High Treason in the next Chapter following, cap. 2. verbo. Et pur ceo que plusors auters cases, &c.

Escheat 239. *i* 12 El. Dier 289. Lib. 3. fo. 10. 35. Lib. 7. fo. 33, 34. Lib. 8. 72. 166. lib. 9. fo. 140. Stanf. Pl. Corone. 187. a.

## CAP. II.

### Of Petit Treason.

**E**T ovesque ceo il y ad un autre maniere de Treason, cest assavoir, quant un servant tua son maister, ou un feme tua son baron, ou quant home seculer ou de religion tua son prelate a que il doit foye & obedience. Et de tiel maniere de Treason la forfeiture des Escheats appertenant a chescun Seignior de son fee proper, &c.

Britton ca. 8. &  
cap. 22.

And moreover there is another manner of Treason, that is to say, when a Servant slayeth his Master, or a Wife her Husband, or when a man Secular or Religious slayeth his Prelate to whom he oweth faith



faith and obedience. And of such Treason the Escheats ought to pertain to every Lord of his own fee, &c.

It was called High or Grand Treason in respect of the Royal Majesty against whom it is committed, and comparatively it is called Petit Treason (whereof now this Statute speaketh) in respect it is committed against Subjects and inferior persons, whereof this Act doth enumerate three kinds.

**¶ Quant un servant tua son Maister. ]** This was Petit Treason by the Common Law, for so it appeareth by the 2 book of 12 Ass. that a woman servant killed her Mistresse, wherefore she had judgment to be burnt, which is the judgment at this day of a woman for Petit Treason. And herewith agreeth 21 E. 3. where the reader must know, that instead of Mere in that case you must read Maister.

**b** And upon this Act, if the Servant kill the Wife of his Master, it is Petit Treason, for he is Servant both to the Husband and Wife.

**c** If the child commit Parricide in the killing of his Father or Mother (which the Law-makers never imagined any child would do) this case is out of this Statute, unless the child served the Father or Mother for wages, or meat, drink or apparel, for that it is none of these three kinds specified in this Law. And yet the offence is far more heinous and impious in a child than in a servant, for *Peccata contra naturam sunt gravissima*: but the Judges are restrained by this Act, to interpret this Act a simili, or a minore ad majus, as hereafter shall be said. And \* some say that Parricide was Petit Treason by the Common Law.

**d** A servant of malice intended to kill his Master, and lay in wait to do it whilst he was his servant, but did it not till a year after he was out of service, and it was adjudged Petit Treason within this Act.

**¶ Un feme tua son baron. ]** This was Petit Treason by the Common Law, as it appeareth in our books. If the wife procure one to murder her Husband, and he doth it accordingly, in this case the wife being absent is but accessory, and shall be hanged and not burnt, because the accessory cannot be guilty of Petit Treason, where the principal is not guilty but of murder, and the accessory must follow the nature of the principal: but if he that did the murder had been a servant of the Husband, it had been Treason in them both, and the wife should have been burnt. And so it is in the case before of a servant, and in the case hereafter of a Clerk.

If the wife and a stranger kill the Husband, it is Petit Treason in the wife, and murder in the stranger, and so it is in the case of the servant next before, and of the Clerk next after.

Before this Statute it was Petit Treason, si quis falsaverit sigillum domini sui de cujus familia fuit. Britton agreeth herewith. But these are taken away by this Act, and all other saving these that are here expressed.

**¶ Quant home seculer ou de Religion tua son Prelate a que il doit foy & obedience. ]** This clause is understood only of an Ecclesiastical person, be he secular, or regular; if he kill his Prelate, or Superiour, to whom he oweth Faith and Obedience, it is Petit Treason: and so it was at the Common Law. And Petit Treason doth presuppose a trust, and obedience in the offender, either Civil, as in the Wife and Servant, or Ecclesiastical, as in the Ecclesiastical person.

Aidors, abettors, and procurers of any of these Petit Treasons, are within this Law.

If the servant kill his Mistresse, viz. his Masters wife, this is Treason (as hath been said) not by equity, for that is denied as well in Petit Treason, as High Treason, but it is within the letter of this Statute, for she is a Master.

In High Treason there is no accessories, but all be principals, and therefore

4 12 Ass. p. 30.  
21 E. 3. 17.  
F. coron. 447.  
Statham tit. cor.  
21 E. 3. 22 Ass.  
p. 49.  
b 19 H. 6. 47. Pl.  
Com. 86. b.  
Dier. 3. Mar. 128.  
7 El. 235.  
c Exodus. c. 21.  
v. 15. 17.  
Lev. 20. v. 9.  
1 Mar. per Brom-  
ley & Portman  
of the report of  
Justice Dalison.  
vid. 1 R. 3. 4.  
*In culeo parricide  
cum semia, cane,  
gallo, & serpente  
inclusi mari olim  
mergebantur: sed  
nos non habemus  
talem consuetudi-  
nem.*  
\* 22 E. 1. Math.  
Par. 874.  
d 33 Ass. p. 7.  
Li. 1. f. 99. Shellys  
case. 10 H. 6. 47.  
pl. com. 260.  
e 15 E. 1. Coron.  
383: 19 H. 6. 47.  
See c. Pr. & Acc.  
Dier. 34 H. 8. 50.  
Dier. 16 El. 332.  
Saunders case.  
Pasch. 32 E. 3.  
Rot. 62. coram  
rege. Ph. Cliftons  
case.  
\* 40 Ass. p. 15.

Fleta li. 1. ca. 22.  
Britton fo. 16.

19 H. 6. 47.

40 Ass. ubi supra.  
& 16 El. ubi sup.

19 H. 6. 47. by all  
the Judges.



foze whatsoever act or consent will make a man accessory to a Felony, before the act done, the same will make him a principal in case of High Treason. But in case of Petit Treason, there may be accessories, either before, or after the act done, as in case of Murder or Homicide.

Here it appeareth that Acts of Parliament may bind men of the Church, Secular, or Regular, and no benefit of Clergy allowed unto them in case of Treason: but a hereof you shall read at large in the Exposition of the 15 Chapter of Articuli cleri.

<sup>a</sup> See the 2. part of the Institutes. Artic. cleri. ca. 15. Hil. 3 R. 2. coram rege Rot. 8. London. Jo. Imperialis case.

[ Et de tiel maner de Treason forfeiture des Escheats appertient nont a chescun Seignior de son fee proper. ] See hereof hereafter in the Chapter of Forfeiture. <sup>b</sup> If a man seised in fee of a Fair, Market, Common, Rent, Charge, Rent-seck, Warren, Coprovy, or any other inheritance, that is not holden, and is attainted of Felony, the King shall have the profits of them during his life: but after his decease, seeing the blood is corrupted, they cannot descend to the heir, \* nor can they escheat because they be not holden, they perish and are extinct by Act in Law: For in Escheats for Petit Treason or Felony, a tenure is requisite, as well in the case of the King, as of the subject.

For Escheats see the 1. part of the Institut. Sect. 1. fo. 13. a.

<sup>b</sup> See before ca. 1. verbo, Des terres & tenements, &c.

An Approver in case of Felony, refusing the combat with the Appellee, shall have like judgment that is for Petit Treason, Probator recusans duellum adjudicatur suspendi, & trahi in odium falsæ accusationis: but yet it is not Petit Treason, because it is none of the three specified in this Act.

\* See 1. part of the Institutes fo. 13. verb. Avera la terre per escheat. Mic. 4 H. 4. coram rege. Rot. 22. Anglia.

The case which Shard reciteth in 40 Ass. that a Norman being Leader of an English ship, who had English men with him, and robbed divers upon the Sea, and were taken and found guilty: and as to the Norman it was but Felony (because Normandy was lost by King John, and was out of the ligeance of E. 3.) and as to the English it was adjudged Treason, and the offenders drawn and hanged, which was the judgment of Petit Treason: but this must be intended to fall out before this Statute of 25 E. 3. for it is none of the Petit Treasons mentioned in this Act.

40 Ass. 24. Vide 2 H. 5. cap. 6.

[ Et pur ceo que plusors auters cases de semblables Treason purront escheer en temps a vener, queux home ne purra penser ne declarer en present: Assentu est, que si autre case suppose Treason, que n'est especie paramount, aviegne de novel devant aucun Justice, demourge le Justice sans alter a judgment de Treason, tanque per devant nostre Seignior le Roy en son Parliament soit le case mere & declare, le que le ceo doit estre adjudge Treason, ou autre Felony.

*Rerum progressus ostendunt multa quæ initio prævideri non possunt.*

And because that many other like cases of Treason may happen in time to come, which a man cannot think nor declare at this present time: It is accorded, that if any other case supposed Treason, which is not above specified, doth happen before any Justice, the Justice shall tarry without going to judgment of the Treason, till the cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or other Felony.

[ Semblable Treason. ] In this case, the Judges shall not judge a simili, or by equity, argument, or inference of any Treason, High or Petit, for no like case shall be adjudged Treason, &c. And note this branch extendeth (as hath been said) to the offence, viz. Treason, and not to trial, judgment, or execution.

[ Si autre case suppose Treason. ] No other case, though of as high or higher nature, &c. shall be adjudged Treason, High or Petit, as before it appeareth in the case of Parricide, Anno 1 Mariæ, ubi supra.

[ Treason. ] Either High Treason, or Petit Treason, so as this branch extendeth as hath been said to the offence of Treason only.

[ Quæ:



See the exposition upon the Statute *De frang. prisonam.*

1 H. 6. 5.

9 E. 4. 26, &c.

See 1 Mar. of Justice Dalisons Report, ubi supra.

1 Mar. cap. 1.

Rot. Parl. 5 H. 4. nu. 11, 12. See nu. 15. Ibid.

27 Ass. p. 63.

[Que nest specific paramount.] This word [specific] is to be specially observed, for it is as much to say, as particularised, or set down particularly: so as nothing is left to the construction of the Judge, if it be not specified and particularised before by this Act. A happy sanctuary or place of refuge for Judges to fly unto, that no mans blood and ruine of his family do lie upon their consciences against Law. And if that the construction by arguments a simili, or a minori ad majus had been left to Judges, the mischief before this Statute would have remained, viz. diversity of opinions, what ought to be adjudged Treason, which this Statute hath taken away by expresse words: and the Statute of 1 Mar. doth repeal all Treasons, &c. but only such as be declared and expessed in this Act of 25 E. 3. wherein this word [expessed] is to be observed.

In the Parliament holden Anno 5 H. 4. the Earl of Northumberland came before the King and Lords in Parliament, and by his Petition to the King, acknowledged to have done against his allegiance: and namely, for gathering of Power and giving of Liberties, whereof he prayeth pardon: and the rather, that upon the Kings Letters he yielded himself, and came to the King unto York, where he might have kept himself away. The which Petition the King delivered to the Justices, by them to be considered. Whereupon the Lords made protestation, that the order thereof belonged to them, as Peers of the Parliament, to whom such judgment belonged in weighing of this Statute of 25 E. 3. &c. and they judged the same to be no Treason, nor Felony, but only trespasss finable at the Kings will. And the opinion in 27 Ass. is denied, that if one of the Indicters discover the counsel of the King, that it should be Treason: because it is not specified before in this Act, and therefore neither High Treason, nor Petit Treason.

[Tanque per devant le Roy & son Parliament.] By this it is apparent, that any like or other case ought to be declared by the whole Parliament, (and not by the King and Lords of the Upper house only, or by the King and the Commons, or by the Lords and Commons.) And so it was done by the whole Court of Parliament in 3 R. 2. ubi supra. 5 Eliz. 18 Eliz. ubi supra, and many other Acts of Parliament.

Rot. Par. 17. R. 2. nu. 20.

John Duke of Gwyen and of Lancaster, Steward of England, and Thomas Duke of Gloucester, Constable of England, the Kings Uncles, complained to the King, that Thomas Talbot Knight, with other his adherents, conspired the death of the said Dukes in divers parts of Cheshire, as the same was confessed and well known, and prayed that the Parliament might judge of the fault: (which Petition was just, and according to this branch of the Statute of 25 E. 3.) but the Record saith further: whereupon the King and Lords in the Parliament adjudged the same fact to be open and High Treason: which judgment wanting the assent of the Commons, was no declaration within this Act of 25 E. 3. because it was not by the King and his Parliament according to this Act, but by the King and Lords only.

13 El. cap. 1, 2.

14 El. ca. 1, 2, &c.

Anno 21. R. 2. in Latin.

[Soit le case monstre & declare, &c.] This Declaration may be absolute, or sub modo, for a time.

By this which hath been said it manifestly appeareth, what damnable and damned opinions those were concerning High Treason, of Tresilian Chief Justice of the Kings Bench, Sir Robert Belknap Chief Justice of the Common Bench, Sir John Holt, Sir Roger Fulthorp, and Sir William Burghe, Knights, fellows of the said Sir Robert Belknap, and of John Lockton one of the Kings Serjeants, that were given to King R. the 2. at Nottingham, in the Eleventh year of his Reign. But more detestable were the opinions of the Justices in 21 R. 2. and of Hankford and Brinchley the Kings Serjeants, (and the rather, because they took no example by the punishment of the former) which affirmed the said opinions to be good and lawful, saving Sir William Thirning Chief

1 R. 2. ca. 1. & 4.



Chief Justice of the Common Bench gave this answer: That declaration of Treason not declared belongeth to the Parliament: but to please, he said, that if he had been a Lord or a Peer of Parliament, if it had been demanded of him, he would have made the like answers. These Justices and Serjeants being called in question in the Parliament holden Anno 1 H. 4. for their said opinions, answered (as divers Lords Spiritual and Temporal did) that they durst no other wise do, for fear of death. It was thereupon enacted, that the Lords Spiritual and Temporal, or Justices, be not from thenceforth received to say, that they durst not for fear of death to say the truth. Which opinions being so manifestly against our said Act of 25 E. 3. afterwards in the Parliament holden 1 H. 4. it is affirmed by authority of Parliament, that in the said Parliament of 21 R. 2. divers Statutes, Judgments, Ordinances, and Stablishments were made, ordained, and given erroneously and dolefully in great disherison and final destruction and undoing of many honourable Lords, and other liege people of this Realm, and of their heirs for ever. And therefore not only that Parliament of 21 R. 2. and the circumstances and dependances thereupon, are wholly reverted, revoked, voided, undone, repealed, and adnulled for ever, but also the Parliament holden in 11 R. 2. by authority of which Parliament, Tresilian, Belknap, and the rest of those false Justices and Serjeants aforesaid were attainted, is confirmed, for that it was (as there the Parliament affirmeth) for the great honour and common profit of the Realm.

Ror. Parl. 1 H. 4. nu. 97.

*Melius est omnia mala pati quam malo consentire.*

1 H. 4. ca. 3.

See the consequence of erroneous opinions in case of high Treason.

1 H. 4. cap. 4.

[ Et si per case ascun home de cest roialme chivache armee, &c. ] And if percase any man of this Realm ride armed, &c. For exposition hereof, see the Chapter hereafter against riding or going armed.

For the better instruction of the Reader to discern what offences be High Treason or Petit Treason at this day, it shall be necessary to add hereunto the Statute of 1 Mar. whereby it is enacted, [ That no Act, Deed, or Offence, being by Act of Parliament or Statute made Treason, Petit Treason, or misprision of Treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be taken, had, deemed, or adjudged to be High Treason, Petit Treason, or misprision of Treason, but only such as be declared and expressed to be Treason, Petit Treason, or misprision of Treason, in or by the Act of Parliament or Statute made in the 25 year of the reign of the most noble King of famous memory, King Edward the third, touching or concerning Treason, or the declaration of Treason, and none other, &c. any Act or Acts of Parliament, Statute, or Statutes, had or made at any time heretofore or after the said 25 year of King E. 3. or any other declaration or matter to the contrary in any wise notwithstanding. ]

1 Mar. ca. 1. Sessione prima.

The like Statute was made, Anno

1 E. 6. ca. 12.

See the Statute of 1 H. 4. ca. 10. to the like effect.

*Inter leges Canonici cap. 7. Inprimis juste leges ut efferrantur, injuste deprimuntur.*

*Aliter in antiquo M. S.*

*Imprimis ut juste leges erigantur, injuste subvertuntur.*

Before this Act so many Treasons had been made and declared by Act of Parliament since this Act of 25 E. 3. some in particular, and some in general, and in such sort penned, as not only the ignorant and unlearned people, but also learned and expert men were many times trapped and snared: and sometimes Treasons made or declared in one Kings time, were abrogated in another Kings time, either by special or general words: so as the mischief before 25 E. 3. of the uncertainty what was Treason, and what not, became to be so frequent and dangerous, as the safest and surest remedy was, by this excellent Act of 1 Mar. to abrogate and repeal all, but only such as are specified and expressed in this Statute of 25 E. 3. By which Law, the safety both of the King and of the subject, and the preservation of the Commonweal is wisely and sufficiently provided for, in such certainty, as nihil relictum est arbitrio Judicis. And certainly the two Rules recited in the Preamble of the said Act of 1 Mar. are assuredly true. The first, [ That the State of a King standeth and consisteth more assured by the love and favour of the subject toward their Sovereign, then in the dread and fear of Laws made with rigorous pains and extream punishment for not obeying their Sovereign. ] And the other, [ That Laws justly made for the preservation of the Commonweal without extream punishment or penalty, are more often, and for the most part better obeyed and kept, then Laws and Statutes made with



Seneca.

with great and extreme punishment. ] Mitius imperanti melius paretur.

In which Act five notable things are to be observed. First, It extendeth (without exception) to all High Treasons made by any Act of Parliament since the said Act of 25 E. 3. Secondly, to all declarations of High Treasons by any Act of Parliament since the said Act of 25 E. 3. (as of the said Declaration in 3 R. 2. of killing an Ambassadors and the like.) Thirdly, to all Petit Treasons made or declared by any Act of Parliament since the said Act of 25 E. 3. Fourthly, albeit misprision of Treason is not mentioned in the Act of 25 E. 3. yet every misprision of any Treason made or declared since that Act by any Act of Parliament is abrogated. Fifthly, no offence to be Treason, Petit Treason or misprision of Treason, but only such as be declared and expressed to be Treason, Petit Treason, or misprision of Treason by the said Act of 25 E. 3. Here three things are to be observed: First, that this word [expressed] excludeth all implications or inferences whatsoever. Secondly, here misprision of Treason is taken for concealment of high Treason or petit Treason, and only of high Treason or petit Treason specified and expressed in the Act of 25 E. 3. Thirdly, that no former judgment, attainder, president, resolution, or opinion of Judges or Justices of high Treason, petit Treason, or misprision of Treason, other then such as are specified and expressed in the said Act of 25 E. 3. are to be followed or drawn to examples for the words be direct and plain, [That from henceforth no Act, Dæd, or Offence, &c. shall be taken, had, deemed, or adjudged to be Treason, Petit Treason, or misprision of Treason, but only such as be declared and expressed in the said Act of 25 E. 3. &c. any Act of Parliament or Statute after 25 E. 3. or any other declaration or matter to the contrary notwithstanding.] So as there is no high Treason, petit Treason, or misprision of any Treason made or declared by any Act of Parliament or otherwise since the Act of 25 E. 3. but only such as have been made since the said Act of 1 Maria, and of those, only such as were made perpetual, and not during the life of Queen Mary, or of Queen Elizabeth, whereof there be divers which now are expired, which you may read being all in print. But there wanted nothing to the perfection of the Statute of 25 E. 3. but a limitation of some certain time wherein the offender should be accused. *c* Post intervallum temporis accusator non erit audiendus, nisi docere potest se fuisse iustis rationibus impeditum.

Or the declaration of Treason, &c. *d* Declarations made during the natural life of Queen Elizabeth ceased by her death: for Declarations may have limitations as well as Statutes introductory of new Laws.

There is another excellent branch of a Statute made *e* in 1 & 2 Ph. & Mar. in these words. [And be it further enacted by the authority aforesaid, that all trials hereafter to be had, awarded, or made for any Treason, shall be had and used only according to the due order and course of the Common Law. ]

¶ All trials. ] *f* Upon these words many things have been observed by others. First, that the Letter of this Act extendeth only to trial of high Treasons, or petit Treasons, and not to misprision. Secondly, Foreign Treasons are to be tried by the Statute *g* of 35 H. 8. ca. 2. and so it was resolved by all the Justices of England in Orurks Case, and had been so resolved before. But for trials of Treasons to be had in Wales, or where the Kings writ runneth not, in such Shires as the King shall assign by his Commission by the *\** Statute of 32 H. 8. ca. 4. are abrogated by this Act, because they are triable by the Law.

*h* It hath been holden, that upon the trial of misprision of Treason there must be two lawful witnesses, as well upon the trial, as upon the indictment, as it was resolved by the Justices in the Lord Lumleyes Case, Hil. 14 Eliz. reported by the Lord Dier, under his own hand, which we have seen, but left out of the print, which for other purposes is cited hereafter. Thirdly, it hath been holden, that this Act extendeth not to the Indictment of any Treason, but to the trial by Peers, if the offender be noble: or by Free-holders, if the offender be under the degree of nobility: and therefore upon the indictment which is in manner of an

accusation

*a* That is, of such Treason, high or petit, as is expressed in the Act of 25 E. 3. and of no other Treason.

*b* 1 Mar. cap. 6.

*1 & 2 Ph. & Mar. cap. 11.*

*5 Eliz. ca. 1. & 11.*

*18 Eliz. cap. 1.*

*13 Eliz. cap. 2.*

*23 Eliz. cap. 1.*

*27 Eliz. cap. 2.*

*3 Jac. cap. 4.*

*c* Bracton lib. 3.

*fol. 118. b.*

*d* 13 Eliz. cap. 1.

*14 Eliz. cap. 1. &*

*cap. 2.*

*e* 1 & 2 Ph. & M.

*cap. 10.*

*f* See the second

part of the Insti-

tutes. Mag. Carta.

*cap. 29.*

Verbo (per judi-

cium parium.)

*g* 35 H. 8. ca. 2.

*3* Mar. Dier 132.

lib. 7. fo. 23. in

Calvins case.

*Pasch. 33 Eliz.*

*Orurks case.*

*\* 32 H. 8. cap. 4.*

*h* 1 E. 6. ca. 12.

*5 E. 6. ca. 11.*

Both which are

mentioned in the

next Section.

*Hil. 14 Eliz.*

*Dier M. S.*

*Nota.* This is the

last resolution of

the Judges in this

point.

At this time

*Catlin and Dier*

were Chief Ju-

stices, and *San-*

*ders* Chief Baron,

&c.



accusation, by the Statutes of 1 E. 6. and 5 E. 6. two lawful witnesses are requisite: the words of the Statute of 1 E. 6. in the last branch be, [That none shall be indicted, arraigned, condemned, or convicted for any Treason, Petit Treason, misprision of Treason, or for any words before specified to be spoken, after the said first day of February, for which the same offender or speaker shall in any wise suffer pains of death, imprisonment, loss or forfeiture of his Goods, Chattels, Lands, or Tenements, unless he be accused by two sufficient and lawful witnesses, or shall willingly without violence confess the same.]

Nota that [before specified] do refer to the words mentioned before in the Act. 1. It is manifest by the connexion of the words, viz. [for any words before specified to be spoken, &c.] 2. The Treasons in 25 E. 3. were mentioned before. 3. The first words be [for any Treason, Petit Treason, misprision of Treason, &c.]

And by 5 E. 6. ca. 11. it is provided by the last clause save one [That none shall be indicted, arraigned, condemned, convicted, or attainted for any of the Treasons or offences aforesaid, or for any \* other Treasons that now be, or hereafter shall be, which shall hereafter be perpetrated, committed, or done, unless the same offender be thereof accused by two lawful accusers, &c. unless the said party arraigned shall willingly, without violence confess the same.] Here two things are to be observed. 1. The particular penning of both these Acts, viz. indicted, arraigned, convicted, &c. and the words of 1 & 2 of Ph. & Mar. extend to trials only, and not to the Indictment. 2. Two lawful accusers in the Act of 5 E. 6. are taken for two lawful witnesses, for by two lawful accusers, and accused by two lawful witnesses (as it is said 1 E. 6.) is all one: which word [accusers] was used, because two witnesses ought directly to accuse, that is, charge the prisoner, for other accusers have we none in the Common Law: and therefore lawful accusers must be such accusers as Law allows. And so was it resolved in the Lo. Lumleys case by the Justices: for if accusers should not be so taken, then there must be two accusers by 5 E. 6. and two witnesses by 1 E. 6. And the strange conceit in 2 Mar. that one may be an accuser by hearsay, was utterly denied by the Justices in the Lo. Lumleys case. And this word [awarded] in the Statute of 1 & 2 Ph. & Mar. extendeth to the trial upon the arraignment, and not to the indictment, for that is said to be awarded.

And it was resolved by all the Justices in a Rolstons case upon the rebellion in the North, that these words [shall willingly without violence confess the same] are to be understood where the party accused upon his examination before his arraignment, willingly confessed the same without violence, that is, willingly without any torture: and is not meant of a confession before the Judge, for he is never present at any torture, neither upon his arraignment was ever any torture offered. And here cometh another *b* Statute made in 1 & 2 Mar. to be considered, by which it is provided, that Treason for the counterfeiting and impairing of the coin current in this Realm, &c. the offender therein, &c. shall be indicted, arraigned, tried, convicted, or attainted by such like evidence, and in such manner and form, as hath been used and accustomed within this Realm, at any time before the first year of King E. 6. &c. Wherein the special penning of this Act is to be observed, which in case of Treason concerning the counterfeiting or impairing of coin, &c. hath by particular words restored the evidence requisite by the Common Law, before the Statute of 1 E. 6. as well upon the indictment as the trial. But the Act of 1 & 2 Ph. & Mar. cap. 10. extends to trials only in other cases of High Treason, and therefore that Act extendeth not to the indictment of other High Treasons. Also it is most necessary (as many do hold) that there should be two lawful accusers, that is, two lawful witnesses at the time of the indictment, for that it is commonly found in the absence of the party accused, and it may be when the party suspected is beyond Sea, or in remote parts, and may be outlawed thereupon; and therefore seeing the indictment is the foundation of all, it is most necessary to have substantial proof in a cause so criminal, where probationes oportet esse luce clariores.

1 E. 6. cap. 12.  
5 E. 6. cap. 11.  
See 13 El. cap. 1.  
See before *Verb.*  
[*Deo probabitur sit attaint.*]

See 1 El. cap. 6.  
Stanf. Pl. Coron.  
89 & 164.  
4 Mar. Coron.  
Br. 220. Dier.  
2 Mar. 99. &  
3 Mar. 132.  
\* Nota the generality of these words.  
*Regula. Verba generalia gen. ratiōe sunt intelligenda.*  
See hereafter c. 49.  
of Piracy, &c.  
Hil 14. El. Lo.  
Lumleys case.  
Ubi supra.  
2 Mar. Dier 99.  
100. Thomas's Case.

*a* Mich. 13 & 14.  
El. Rolstons case.

*b* 1 & 2 Ph. &  
Mar. c. 11. supra.

1 & 2 Ph. & Mar.  
cap. 10.



See Magna Carr.  
c. 29. and the ex-  
position there-  
upon.

4 Pat. 25 E. 3.  
part. 1. nu. 16.

Rot. Parl. 21 R. 2.  
nu. 19, 21. the D.  
of Norff. case.

Rot. Pat. 3 H. 4.  
Ballehulls case.

Rot. Vafcon.

9 H. 4. nu. 14.

John Bolemers

case. Rot. Parl.

2 H. 6. nu. 9. the  
Earl of Ormonds  
case.

Rot. Pat. 8 H. 6.

pa. 2. m. 7. between  
Upion and Dowy.

Uide the 4 part  
of the Institutes.

cap. the Court of  
Chivalry, &c.

See Braff lib. 3.

fo. 119. 2.

b 13 R. 2. ca. 2.

c Mirror ca. 3. §.  
ordenance de at-

traint. Braff. l. 5. f.

354. 48 E. 3. 30.

35 H. 6. 46. Fort.

ca. 32. 15 E. 4. f. 1.

Pl. Com. fo. 8.

d Deu. 17. 6. 19. 15.

Mar. 18. 16. Joh. 18.

23. 2 Cor. 13. 1.

Heb. 10. 28.

e And so I hold

the Statute of 1 E.

6. c. 12. to be a ge-

neral Law, and to

extend to all high

Treasons, &c.

f Nota as well up-

on the indictment

as the arraignment

of Treason there

ought to be two

accusers. See Dier 2

& 3 Ph. & Mar. 132

g 1 E. 6. ca. 12. the

last clause.

5 El. ca. 1. 1 & 2

Ph. & Mar. ca. 11.

Braff. li. 2. f. 118.

Qui accusat inte-

græ fame sit, &

non criminofus.

i Stat. de Kenelw.

secunda parte

Ver. Mag. Carr.

cap. 16.

k See the first part

of the Institutes.

S. 194. See Fortef-

cue c. 26, 27. Juries

ought to be infor-

med by evidences

and witnesses.

Lastly, If the Indictment were part of the trial, then ought he that is noble, and a Lord of Parliament, be Indicted of High Treason, &c. by his Peers: For the trial of him (without question) must be by his Peers: but the Indictment of Peers of the Realm is always by Free-holders, and not by their Peers, as hereafter shall appear. We have been the longer herein in respect of some variety of opinion (for want of due and intire consideration had of all and every part of that which hath been said) upon serious study touching this point, without respect of a common wandring opinion.

And it seemeth that by the ancient Common Law one accuser or witness was not sufficient to convict any person of High Treason: a For in that case, where is but one accuser, it shall be tried before the Constable and Marshal by Combat, as by many records appeareth. b But the Constable and Marshal have no jurisdiction to hold plea of any thing, which may be determined or discusled by the Common Law. And that two witnesses be required, appeareth by our books, and I remember no authority in our books to the contrary; and the Common Law herein is grounded upon the Law of God expressed both in the old and new Testament: d In ore duorum aut trium testium peribit qui interficietur: Nemo occidatur uno contra se dicente testimonium.

And this seemeth to be the more clear in the trial by the Peers, or Nobles of the Realm, because they come de aliquo vicineto, whereby they might take notice of the fact in respect of vicinitie, as other Jurors may do.

Having now rehearsed what others have said and holden, we upon due consideration had of the whole matter will set down our own opinion, and reasons, in these Four points following. First, That the Statute of 5 E. 6. cap. 11. is a general Law, and extends to all High Treasons, as well by the Common Law declared by the Statute of 25 E. 3. as to any other Statute made or to be made, the negative words of which Statute be: [No person shall be indicted, arraigned, convicted, condemned, or attainted for any Treason that now is, or hereafter shall be, &c.] Which words without all question are general, and so to be taken. The words of that Statute be further, [Unless the same offender be accused by two lawful accusers.] These two lawful accusers are in judgment of Law taken for two lawful witnesses, and that for two causes: First, They must be lawful, that is, allowed by the Laws of the Realm: and by the Law, upon the arraignment of the Prisoner upon the Indictment of Treason, no other accuser can be heard, but witnesses only. Secondly, The words of the Statute are [Which said accusers at the time of the arraignment of the party accused, if they be then living, shall be brought in person before the party so accused, and avow, and maintain that which they have to say to prove him guilty of the Treason, unless the party arraigned shall willingly without violence confess the same,] as by that Act it appeareth. Now to avow and maintain that which they have to say, to prove him guilty of the Treason, is the proper office and duty of witnesses, and so it is said in the Statute of 21 E. 6. c. 12. in the last clause (by two lawful witnesses.) See the Statute of 5 El. c. 1. where it is said [accused by good and sufficient testimony:] and to the same intent, the Statute of 1 & 2 Ph. & Mar. cap. 11. for the word [accused.]

1. Puniantur accusatores penes dominum regem, quodammodo Rex eis de facili non credat: & talis poena fiat eis, qualis debeat fieri illis, qui injuste fideles dñi regis exhaeredari & destrui fecerunt, &c.

2. That this Act of 5 E. 6. extends as well to Petit Treason as High Treason, for the words be [any Treason:] and so doth the Statute of 1 E. 6. ca. 12.

3. That the Statute of 1 & 2 Ph. & Mar. cap. 10. doth not abrogate the said Act of 1 E. 6. or of 5 E. 6. For that Act of 1 & 2 Ph. & Mar. extends only to trials by the verdict of twelve men de vicineto, of the place where the offence is alledged, and k the Indictment is no part of the trial, but an information or declaration for the King, and the evidence of witnesses to the Jury is no part of the trial, for by Law the trial in that case is not by witnesses, but by the ver-

dict



dict of twelve men, and so a manifest diversity between the evidence to a Jury, and a trial by Jury. And the word [awarded] in that Statute doth prove that that Act extended only to the Venire facias for trial, for neither the indictment nor the evidence can be said to be awarded: *Veritas quæ minime defensatur, opprimitur, & qui non improbat, approbat. Et sic libere animam meam liberavi.*

*a* The trial against an Alien, that lived here under the protection of the King, and amity being between both Kings, for High Treason, shall by force of this Act of 1 & 2 Ph. & Mar. be tried according to the due course of the Common Law, and therefore in that case he shall not be tried per medietatem linguæ, as he shall be in case of Petit Treason, Murder, and Felony, if he prayeth it.

*4. b* That a trial in a forraign County upon examination before three of the Council, &c. by the Statute of 33 H. 8. cap. 23. is abrogated by this Act of 1 & 2 Ph. & Mar. being a trial contrary to the due course of the Common Law, which is to have it tried by Jurours of the proper County, *c* but the indictment being found in the proper County, it may be by special commission heard and determined before Commissioners in any forraign County, but the trial must be by Jurours of the proper County: and this is warranted by the course of the Common Law. And albeit when the Term begins, all Commissions of Oier and Terminer in the County where the Kings Bench sit, be suspended during the Term, yet if an indictment be found before such Commissioners before the Term, there may be a special Commission made to Commissioners in the same County, sitting the Kings Bench in that County, to hear and determine the same during the Term: for the Kings Bench hath no power to proceed thereupon, till the indictment be before them. And it is the better, if the special commission bear Teste after the beginning of the Term. Note a diversity between general Commissions of Oier and Terminer, and such a special Commission; and the Court of Kings Bench may be adjourned, and in the mean time the Commissioners may sit there.

*d* And where it is provided by the Statute of 33 H. 8. cap. 23. that peremptory challenge, should not from thenceforth be admitted or allowed in cases of High Treason or misprision of Treason: *e* This branch is abrogated by the said Act of 1 Mar. For the end of challenge is to have an indifferent trial, and which is required by Law; and to bar the party indicted of his lawful challenge, is to bar him of a principal matter concerning his trial: and all Acts of Parliament concerning incidents to trials contrary to the course of the Common Law, are abrogated by the said words, [and that all trials hereafter, &c.] but all this is to be understood of persons under the degree of Nobility; For in case of a trial of a Noble man, Lord of Parliament, he cannot challenge at all any of his Peers.

*f* Henry Garnet Superiour of the Jesuites in England upon his arraignment for the Powder Treason, did challenge Burrell a Citizen of London peremptorily, and it was allowed unto him by the resolution of all the Judges: *g* So as in case of High Treason, or misprision of High Treason, a man may challenge 35 peremptorily, which is under three Juries, but more he cannot.

Lastly, All Statutes made before the said Act of 1 & 2 Ph. & Mar. for trial of High Treason, Petit Treason, or misprision of Treason, contrary to the due course of the Common Law, are abrogated by the said Act of 1 & 2 Ph. & Mar. and trials by the due course of the Common Law, with challenges incidents in those cases are restored.

*h* If a man be indicted of High Treason, he may at this day plead a forraign plea, as he might do by the Common Law, and shall be tried in the forraign County: but otherwise it is in cases of Petit Treason, Murder, or Felony, for there it shall be tried in the County where the indictment is taken.

And forasmuch as the proceeding against a Noble Peer of the Realm, being a Lord of Parliament in some points agrees, and in other points differeth from the proceeding against a subject under the degree of a Nobility: It shall be necessary to shew wherein they agree, and wherein they differ.

*a* 27 E. 3. ca. 8.  
28 E. 3. ca. 13.  
8 H. 6. ca. 29.  
1 Mar. fo. 144.  
Shirleys case, and  
so it was resolved  
by all the Judges  
Hil. 36 El. in the  
case of Doctor  
Lopez, Emanuel  
Loyfie, and Ste-  
phen Ferreira de  
Gama.  
*b* 33 H. 8. c. 23.  
3 Mar. Dier 132.  
Dier 12 El. 286. b.  
li. 11. fo. 63. a. in  
Doctor Fosters  
case.  
*c* 27 Ass. p. 1.  
21 Ass. p. 12.  
W. 1. c. 3. & c.  
Mic. 25 & 26 El.  
per les Justices in  
Somerviles and  
Ardens case.  
Dier 12 El. 286. b.  
All this was re-  
solved Mic. 1. Ja.  
in Sir Walter  
Raleighs case.  
Pl. Com. 388.  
Count de Leice-  
sters case.  
*d* 33 H. 8. c. 23.  
*e* And so it was  
resolved, An. 1 Ja.  
in Sir Walter  
Raleighs case,  
by all the Judges,  
and had been re-  
solved so before,  
Stan. pl. cor. 157.  
*f* Ja. R. in Garnets  
case.  
And so it was re-  
solved M. 25 & 26  
El. in Somerviles  
& Ardens case.  
*g* Br. tit. Chal-  
lenge 217.  
*h* 22 H. 8. c. 14.  
32 H. 8. c. 3. See  
4 H. 1. c. 2. and  
22 H. 8. c. 2. plea-  
ding &c. for being  
taken out of San-  
ctuary in a forraign  
County in case of  
murder or felony.  
See hereafter ca.  
Sanctuary, all San-  
ctuaries taken a-  
way: and note  
that the statute of  
22 H. 8. &c. extend  
only to Indict-  
ments and not to  
Appeals.



1 H. 4. 1.

1. The Noble Peer of the Realm must be Indicted before Commissioners of Oyer and Terminer, or in the Kings Bench, if the Treason, misprision of Treason, Felony, or misprision thereof be committed in that County where the Kings Bench sit, as it was resolved in the case of Tho. D. of N. in An. 13 Eliz. And this is common to both degrees to be indicted by Jurors of that County where the offence was committed.

1 H. 4. 1.

10 E. 4. 6. b.

13 H. 8. 12.

2. When he is Indicted, then the King by his Commission under the Great Seal constitutes some Peer of the Realm to be hac Vice, Steward of England: For his stile in the Commission is, [Seneschallus Angliæ] who is Judge in this case of the Treason or Felony, or of the misprision of the same committed by any Peer of the Realm. This Commission reciteth the Indictment generally as it is found: and power given to the Lord Steward to receive the Indictment, &c. and to proceed, *Secundum legem & consuetudinem Angliæ*. And a commandment is given thereby to the Peers of the Realm, to be attendant and obedient to him: and a commandment to the Lieutenant of the Tower to bring the prisoner before him.

3. A Certiorari is awarded out of the Chancery to remove the Indictment it self before the Steward of England indilate, which may either bear date the same day of the Stewards Commission, or any day after.

4. The Steward directs his precept under his Seal to the Commissioners, &c. to certifie the Indictment such a day and place.

5. Another Writ goeth out of the Chancery directed to the Lieutenant of the Tower, to bring the body of the prisoner before the Steward at such day and place as he shall appoint.

6. The Lord Steward maketh a precept under his Seal to the Lieutenant of the Tower, &c. and therein expresseth a day and place when he shall bring the prisoner before him.

7. The Steward maketh another precept under his Seal to a Serjeant at Arms, to summon Tot & tales dominos, magnates, & procures hujus regni Angliæ prædicti R. Comitibus E. pares, per quos rei veritas melius sciri poterit, quod ipsi personaliter compareant coram prædicto Seneschallo apud Westm. tali die & hora, ad faciend. ea quæ ex parte domini Regis forent facienda, &c. Wherein Four things are to be observed. First, That all these precepts most commonly bear date all in one day. Secondly, That no number of Peers are named in the precept, and yet there must be Twelve or above. Thirdly, That the precept is awarded for the return of the Peers before any arraignment or plea pleaded by the prisoner. Fourthly, That in this case the Lords are not de vicineto, and therefore the sitting and trial may be in any County of England. And herein are great differences between the case of a Peer of the Realm, and of one under the degree of Nobility.

1 H. 4. 1.

1 H. 4. 1.

8. At the day, the Steward with six Serjeants at Arms before him takes his place under a Cloth of Estate, and then the Clerk of the Crown delivereth unto him his Commission, who redelivereth the same unto him. And the Clerk of the Crown causeth a Serjeant at Arms to make three Oyes, and commandment given in the name of the Lord High Steward of England to keep silence: and then is the Commission read. And then the Usher delivereth to the Steward a white rod, who redelivereth the same to him again, who holdeth it before the Steward. Then another Oyes is made, and commandment given in the name of the High Steward of England, to all Justices and Commissioners to certifie all Indictments and Records, &c. Which being delivered into Court, the Clerk of the Crown readeth the return. Another Oyes is made, that the Lieutenant of the Tower, &c. return his Writ and Precept, and to bring the prisoner to the Bar: which being done, the Clerk reads the return. Another Oyes is made, that the Serjeant at Arms return his precept with names of the Barons and Peers by him summoned, and the return of that is also read. Another Oyes is made, that all Earls, Barons and Peers (which by the commandment of the High Steward be summoned) answer to their names, and then they take their places



places and sit down, and their names are recorded: and the entry of the Record is, that they appear, *Ad faciendum ea quæ ex parte Domini Regis eis injunguntur*. And when they be all in their places and the prisoner at the Bar, the High Steward declares to the prisoner the cause of their assembly, and perswades him to answer without fear, that he shall be heard with patience, and that justice should be done. When the Clerk of the Crown reads the Indictment, and proceeds to the arraignment of the prisoner, and if he plead not guilty, the entry is, *Et de hoc de bono & malo ponit se super Pares suos, &c.* Then the High Steward giveth a charge to the Pærs, exhorting them to try the prisoner indifferently according to their evidence.

1 H. 4. f.

9. The Pærs are not sworn, but are charged, *Super fidelitatibus & ligeantiis Domino Regi debitis*: for so the Record speaketh.

10. Then the Kings learned Council give evidence, and produce their proofs for the King against the prisoner.

11. But the prisoner, when he pleadeth not guilty, whereby he denieth the fact, he needs have no advice of Council to that plea. But if he hath any matter of Law to plead, as Humfrey Stafford in 1 H. 7. had, viz. The privilege of Sanctuary, he shall have Council assigned to him to plead the same, or any other matter in Law: as to plead the general pardon, or a particular pardon, or the like. And after the plea of not guilty, the prisoner can have no Council learned assigned to him to answer the Kings Council learned, nor to defend him. And the reason thereof is, not because it concerneth matter of fact, for *Ex facto jus oritur*: but the true reasons of the Law in this case are: First, that the testimonies and the proofs of the offence ought to be so clear and manifest, as there can be no defence of it. \* Secondly, the Court ought to be in stead of Council for the prisoner, to see that nothing be urged against him contrary to Law and right: nay, any learned man that is present may inform the Court for the benefit of the prisoner, of any thing that may make the proceedings erroneous. And herein there is no diversity between the Peer and another Subject. And to the end that the trial may be the more indifferent, seeing that the safety of the prisoner consisteth in the indifferency of the Court, the Judges ought not to deliver their opinions before-hand of any criminal case, that may come before them judicially. And we read, that in the case of Humfrey Stafford that arch-traytor, Hussey Chief Justice, besought King Henry the Seventh, that he would not desire to know their opinions before-hand for Humfrey Stafford, for they thought it should come before them in the Kings Bench judicially, and then they would do that which of right they ought; and the King accepted of it. And therefore the Judges ought not to deliver their opinions before-hand upon a case put, and proofs urged of one side in absence of the party accused: especially in cases of high nature, and which deserve so fatal and extreme punishment. For how can they be indifferent, who have delivered their opinions before-hand without hearing of the party, when a small addition, or subtraction may alter the case? And how doth it stand with their Oath, who are sworn, That they should well and lawfully serve our Lord the King and his people in the office of a Justice: and they should do equal Law, and execution of right to all his subjects, &c. See more of this matter in the 13 Section here following.

In Scotland in all criminal cases, yea in cases of High Treason, Pærs read may have Council learned.

Vide hereafter upon the Statute of 31 Eliz. concerning witnesses.

\* See more hereof ca. 63. Council learned in Pleas of the Crown.

1 H. 7. fo. 26.

18 E. 3.

12. There be always either all, or some of the Judges ever attendant upon the High Steward, and sit at the feet of the Pærs, or about a Table in the midst, or in some other convenient place.

13. After all the evidence given for the King, and the prisoners answers, and proofs at large, and with patience heard: then is the prisoner withdrawn from the Bar to some private place under the custody of the Lieutenant, &c. And after that he is withdrawn, the Lords that are triers of the prisoner go to some place to consider of their evidence: and if upon debate thereof, they shall doubt of any matter, and thereupon send to the High Steward to have conference with the Judges, or with the High Steward, they ought to have no conference, either with the Judges or the High Steward, but openly in Court, and in the presence



Pasch. 26 H. 8. in the case of the Lord Dacres of the North, reported by Justice Spilman, which we have seen.

sence, and hearing of the Prisoner, as it was resolved by all the Justices of England in the reign of King H. 8. in the case of the Lord Dacres of the North. And this was a just resolution; for when the Lords should put a case, and ask advice thereupon, the Prisoner ought by Law to be present, to see that the case or question be rightly put: and therefore that nothing be done in his absence, until they be agreed on their verdict. Whereupon it followeth, that if the Peers of the Realm, who are intended to be indifferent, can have no conference with the Judges, or with the High Steward in open Court in the absence of the Prisoner: a fortiori, the Kings learned Council should not in the absence of the party accused, upon any case put, or matter shewed by them, privately preoccupate the opinion of the Judges: and upon so just a resolution the case succeeded well, for the Peers found the Lord Dacres not guilty.

Mag. Cart. ca. 29.

14. A Noble man cannot waive his trial by his Peers, and put himself upon the trial of the Country, that is, of twelve Freeholders: for the Statute of Magna Charta is, that he must be tried per Pares. And so it was resolved in the Lord Dacres case, *Ubi supra*.

\* Resolved by all the Judges.  
Mich. 13 & 14 El. in the case of Tho. Duke of Norff.  
1 H. 4. fo. 1.  
10 E. 4. 6. b.  
13 H. 8. fo. 12.  
Tr. 26 H. 8. Spilman's Report.

15. \* The Peers ought to continue together (as Juries in case of other Subjects ought to do) until they be agreed of their Verdict: and when they are agreed, they all come again into the Court, and take their places, and then the Lord High Steward publickly in open Court, beginning with the puisne Lord, (who in the case of the Lord Dacre was the Lord Mordant,) said unto him: My Lord Mordant, Is William Lord Dacre guilty of the Treasons, whereof he hath been indicted or arraigned, or any of them? And the Lord standing up said, Not guilty: and so upward of all the other Lords seriatim: who all gave the same Verdict: In which case the entry is, *Super quo W. Comes E. & ceteri antedicti Pares instanter super fidelitibus & ligeantiis dicto Domino Regi debitis, per prefatum Senescallum ab inferiori Pare usque ad supremum separatim publice examinati dicunt, quod W. Dominus Dacre non est culp. &c.*

16. The Peers give their Verdict in the absence of the prisoner, and then is the prisoner brought to the Bar again: and then doth the Lord Steward acquaint the prisoner with the verdict of his Peers, and give judgment accordingly, either of condemnation or acquittal. But it is not so in the case of another subject: for there the verdict is given in his presence.

Rot. Roman.  
17 E. 2. m. 6.  
Adam Orleton B. of Hereford.  
2 H. 4. Marks B. of Carlisle.  
Stanf. Pl. Coron.  
li. 3. ca. 62. fo. 153.  
in Temps H. 8.

17. Every Lord of Parliament, and that hath voice in Parliament, and called thereunto by the Kings Writ, shall not be tried by his Peers, but only such as sit there *ratione Nobilitatis*, as Dukes, Marquisses, Countesses, Viscounts or Barons, and not such as are Lords of Parliament, *ratione Baroniarum*, quas tenent in jure Ecclesiæ, by reason of their Baronies which they hold in the right the Church, as Archbishops, and Bishops, and in time past some Abbots and Priors, but they shall be tried by the countrey, that is, by Freeholders, for that they are not of the degree of Nobility.

210 E. 4. 6. b.  
Mag. cart. c. 29.

18. No Noble man shall be tried by his Peers, but only at the suit of the King upon an indictment of High Treason, or misprision of the same, Petit Treason, Murder, or other Felony, or misprision of the same. But in case of a Premunire or the like, though it be at the suit of the King, he shall not be tried by his Peers, but by Freeholders. And so in an Appeal at the suit of the party for Petit Treason, Murder, Robbery, or other Felony, he shall be tried by Freeholders. See more hereof in the second part of the Institutes, Magna Carta, ca. 29.

b 11 E. 3. brief 473  
8 R. 2. proces. pl. ultimo.  
20 E. 4. 6.  
20 El. Dier 360.  
38 H. 8. Br. Treason. Seigneur Sancars case.  
Lib. 9. fo. 117:

19. b And albeit a man be Noble, and yet no Lord of the Parliament of this Realm, (as if he be a Nobleman of Scotland, or of Ireland, of France, &c.) he shall be tried by Knights, Esquires, or others of the Commons. And so it is of the Son of a Duke, Marquess, Earl, &c. he is Noble, and called Lord: and yet because he is no Lord of Parliament, he shall be tried as one under the degree of a Peer, and Lord of Parliament.

20. No Peer of the Realm, or any other subject shall be convicted by Verdict, but the said offences must be found by above Four and twenty, viz. by twelve, or above, at his indictment, or by twelve Peers, or above, if he be Noble,



Noble, and by twelve, and not above, if he be under the degree of Nobility.

21. A Peer of the Realm being Indicted of Treason, or Felony, or of Misdemeanor, as is aforesaid, and duly transmitted to the Lords, may be arraigned thereof in the upper House of Parliament, as frequently in Parliament Rolls it doth appear: but then there must be appointed a Steward of England, who shall put him to answer: and if he plead not guilty, he shall be tried per Pares suos, and then the Lords Spiritual must withdraw, and make their prayers: but no Appeal of Treason can be in Parliament, a but is ousted by the Statute of 1 H. 4. cap. 14.

22. b And as the beginning (viz. the finding of the Indictment by Freeholders) is equal to them both: so the most extreme and heavy judgment, if they be found guilty, is equal to both, &c. which you may read in the first part of the Institutes, S. Ct. 147.

23. c And though the Commission of the Lord Steward be only in these latter times hac vice; yet may the same be adjourned, as other Commissions hac vice may. And so it was holden in the Lord Dacres Case. And so it was done by the Steward of England in the case of R. Earl of S. and of F. his wife, who adjourned his Commission until the next day.

24. If execution be not done according to the judgment, then the High Steward in the case of a Peer of the Realm, or the Court or Commissioners in case of another subject, may by their Precepts under their Seals command execution to be done according to the judgment: but in case of High Treason, if all the rest of the judgment (saving the beheading, which is part of the judgment) be pardoned, this ought to be under the Great Seal of England.

25. And when the service is performed, then is an Oyes made for the dissolving of the Commission; and then is the White Rod, which hath been born and holden before the Steward, by him taken in both his hands, and broken over his head.

Lastly, The Indictments, together with the Record of the arraignment, trial, and judgment, shall be delivered into the Kings Bench, there to be kept and enrolled.

Hitherto we have spoken when a Noble man doth appear, and plead not guilty, and put himself upon his Peers: Now let us see what shall be had against him when he is Indicted, and appears not, and cannot be taken: and generally he shall be outlawed, per judicium Coronatorum. But how doth that stand with Magna Charta, Nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum? That is to be intended, when he appears and pleads not guilty, and puts himself upon his Peers: but when he absents himself, and will not yield himself to the due trial of his Peers, then he shall be outlawed per judicium Coronatorum, or else he should take advantage of his own contumacy, and flying from judgment. d For proces to be awarded upon the Indictment or Appeal of Treason, Felony or Trespass, either against a Noble man or any other, see the Statute of 6 H. 6. and 8 H. 6. and if the proces and order prescribed by those Statutes be not pursued, the outlawry may be reversed by Writ of Error, which Writ ought to be granted to him ex merito Justitiarum, as it was adjudged in Ninian Menvils case: and those Statutes do extend as well to the Kings Bench, as to other Courts having by Commission power to hear and determine the same, and very few outlawries of Treason or Felony, are of force and validity in Law, for that these Acts are not pursued.

And these Acts are well expounded by our \* Books, and therefore they shall not need to be recited at large. This is necessary to be added, that the opinion of Stanf. Pl. Cor. 182 l. upon the Statute of 33 H. 8. c. 20. is, where the attainder is not erroneous, but lawful by the course of the Law: and so it was resolved, Tr. 28 Eliz. and thereupon e the Statute of 28 Eliz. c. 2. was made, that no attainder that then was for any High Treason should be reversed for Error where the party was executed. But that Act extendeth only to Attainders before that Act, and where the party attainted suffered pains of death, as hath been said.

10 E. 4. 6.  
Rot. Par. 21 R. 2.  
Countree de  
Arundels case.  
Rot. Parliam.  
5 H. 4. nu. 11, 12.  
31 H. 6. nu. 49.  
Countree de De-  
vons case.  
28 H. 6. nu. 19.  
Duke of Suff.  
21 H. 4. cap. 14.  
1 H. 4. 1.  
Stanf. Pl. Coron.  
182. E. K.  
See hereafter  
cap. Judgement  
and execution.  
c Pasch. 26 H. 8;  
ubi supra.  
L. 5 E. 4. 33.  
12 H. 4. 29.

Mag. Carr. ca. 29.  
d See hereafter in  
the chapter of  
judgement and  
execution concern-  
ing reversing of  
Outlawries.  
6 H. 6. ca. 1.  
8 H. 6. ca. 10.  
Mich. 26 & 27  
Eliz. in brief de  
error coram Re-  
ge in Ninian  
Menvils case.  
Udary de haur  
Treason reverse  
in Bank le Roy.  
\* 19 H. 6. fo. 1, 2.  
11 H. 6. 54.  
1 E. 4. 1. 30 H. 6.  
Proces 192.  
31 H. 6. 11.  
Vide F. N. B.  
115 l.  
Li. Intr. R. f. 122:  
Stanf. Pl. cor. 68.  
69. 182 l.  
e 28 El. ca. 2.



See the first part  
of the Insti. Sect.  
26 H. 8. cap. 13.  
5 E. 6. cap. 11.  
12 El. Dier 287.

But admitting the process be awarded according to these Statutes, and the truth is, that the party Indicted of High Treason ( be he noble or other ) at the time of the outlawry pronounced, is out of the Realm, &c. whether he may avoid the same by Writ of Error? The answer is, that he might have avoided the same by Writ of Error at the Common Law: but now in case of High Treason he is barred of his Writ of Error by the Statutes of 26 H. 8. and 5 E. 6. which Statutes are expounded to extend generally to all Treasons, but those Statutes extend not to any other offence then High Treason only, and therefore all other offences remain as they did at the Common Law for that point.

\* Artic. sup. carr.  
cap. 9. 28 E. 1.  
20 E. 3. cap. 6.  
34 E. 3. c. 4.  
42 E. 3. c. 11.  
Regist. 178.  
Rast. pl. 117.  
\* 11 H. 4. ca. 9.  
a Stanf. pl. cor. 87. c  
b Rot. Par. 11 H. 4.  
nu. 15. in the Kings  
Bench.  
c Vid. 11 H. 4.  
fo. 41.  
21 H. 6. 30.  
9 E. 4. 16.  
3 H. 6. 55.  
26 Ass. 28.  
d 11 H. 4. 41.  
e 14 H. 4. 19.  
f 21 E. 3. 5.  
15 E. 3. chal. 113.  
27 Ass. pa. 65.  
28 Ass. 24. 22.  
49 E. 3. 1. 49 Ass.  
1. 28. 43 E. 3.  
chal. 54. 6 R. 2.  
chal. 102.  
7 H. 4. 10.  
21 E. 4. 74.  
19 H. 6. 9.  
21 H. 6. 12.  
14 H. 7. 1.  
g Nota.

Now for that all Indictments for any offence whatsoever, as well of Noblesmen, as of any under the degree of Nobility, ought by the Common Law of the Realm to be by persons duly returned, and by \* lawful liege people, indifferent as they stand unworn, and without any denomination of any: a good and profitable Law \* was made in that behalf at the Parliament holden in 11 H. 4. in these words. Item because that now of late a Inquests were taken at Westm' of persons named to the b Justices, without due return of the Sherif, of which persons some were c outlawed before the said Justices of Record, and some fled to Sanctuary for Treason, and some for Felony, there to have refuge; by whom as well many offenders were Indicted, as other lawful liege people of our Lord the King, not guilty by conspiracy, abatement, and false imagination of other persons for their special advantage and singular lucre, against the course of the Common Law used and accustomed before this time. Our said Lord the King for the greater ease and quietness of his people, will and granteth, that the same Indictment so made, with all the dependence thereof be d revoked, adnulled, void, and holden for none for ever. And that from henceforth no Indictment be made by any such persons, but by enquest of the Kings lawful e liege people, in the manner as was used in the time of his Noble Progenitors, returned by the Sheriffs, or Bayliffs of Franchises, without any f denomination to the Sheriffs, or Bayliffs of Franchises before made by any person of the names, which by him should be impanelled, except it be by the Officers of the said Sheriffs or Bayliffs or Franchises sworn and known to make the same, g and other Officers to whom it pertaineth to make the same according to the Law of England. And if any Indictment be made hereafter in any point to the contrary, that the same Indictment be also void, revoked, and for ever holden for none.

The body of this Act consisteth upon two distinct Purviens or Branches, the one to remedy a mischief past, the other to provide for the time to come. The first branch consisteth of a preamble, and a purvien: and the preamble containeth these eight parts. First, It sheweth divers Inquests had been taken at Westminster by persons named to the Justices. Secondly, Without due return of the Sherif. Thirdly, Of which some were Outlawed before the said Justices of Record. Fourthly, Some fled to Sanctuary for Treason, and some for Felony. Fifthly, By whom any offenders were Indicted. Sixthly, Some not guilty. Seventhly, By Conspiracy, &c. Eighthly, That all this was against the course of the Common Law. By the body of the Act, it is enacted that the same Indictment, with all the dependence thereof, be revoked and made void. Then followeth the second branch or purvien for the time to come, and this purvien consisteth of divers parts: First, In describing by what persons Indictments ought to be found, and therein 1. privative, that is, not by any such persons, having reference to the preamble, which persons we have before particularly distinguished. 2. Positive, That all Indictments must be found by persons of these qualities. 1. They must be the Kings lawful liege people. 2. Returned by Sheriffs or Bayliffs of Franchises, and other Officers to whom it pertaineth. 3. Without any denomination to the Sheriffs, Bayliffs, or other Officers: and this purvien is in affirmance, and declaratory of the Common Law.

The second part of the purvien is introductory of a new law, viz. That if any Indictment be made hereafter in any point to the contrary, that the same Indictment be void, revoked, and holden for none. Wherein these two things are to be



be observed: 1. That this is a general Law, and extendeth to all Indictments for any crime, default, or offence whatsoever: for the words be [if any Indictment] generally without naming of any Court, or before whom. 2. If the Indictment be found by any persons that are outlawed, or not the Kings lawful liege people, or not lawfully returned, or denominated by any, viz. by all or any of these, that then the Indictment is void, for the words be, [if any Indictment be made hereafter in any point to the contrary, &c.] Upon this Statute in the case of Robert Scarlet before the Justices of Assize at Bury in the County of Suffolk, in Sommer Vacation, 10 Ja. R. these points were resolved and adjudged: First, where at the Sessions of the Peace holden at Woodbridge in the said County of Suffolk, Robert Scarlet by confederacy between him and the Clerk, that was to read the panell of the grand Jury returned by the Sherif, (whereof he was none, albeit he laboured the Sherif to have returned him) that the Clerk should read him as one of the panell, which was done accordingly, and he sworn: It was resolved and adjudged that this case was within this Statute, for that he was not returned by the Sherif. Secondly, That where the rest of the great inquest giving faith to him Indicted seventeen honest and good men upon divers penal Statutes, which was done by the said Robert Scarlet maliciously: It was resolved and adjudged, that albeit he \* alone was sworn without the return of the Sherif, and all the rest duly returned, yet this case was within this Statute, and all the Indictments found by him and the rest were void by this Statute: for hereby it appeared what mischief such a one might do. Thirdly, That Robert Scarlet upon this case had offended against the said Act, and might be Indicted thereupon: and accordingly he was upon sufficient proof of the fact, as is aforesaid, Indicted upon the said Act, and pleaded not guilty, and was found guilty. Fourthly, That this Act extendeth not only to indictments of Treason and Felony, but of all other offences and defaults whatsoever, according to the generality of the words. Fifthly, Consideration was had of the Act of 3 H. 8. cap. 12. and resolved clearly that this Statute had not altered the Act of 11 H. 4. in any thing concerning the offence of Scarlet, as upon that, which shall be said of the Act of 3 H. 8. shall appear. And upon hearing of Counsel learned what they could say in arrest of Judgment, at last Judgment was given, that he should be fined and imprisoned, and ordered by the Court that no process should go out upon the said Indictments found by the said great inquest, whereof Scarlet was one.

\* 47 E. 3. 13  
7 H. 4. 10.  
21 E. 4. 74.

3 H. 8. ca. 12.

Yet notwithstanding this good Law, through the subtilty, and untrue demeanour of Sheriffs, and their Ministers, great extortions and oppressions be and have been committed and done to many of the Kings Subjects by means of returning at Sessions holden within Counties and Shires for the body of the Shire, the names of such persons as for the singular advantage, &c. of the said Sheriffs and their Ministers, will be wilfully forsworn and perjured by the sinister labour of the said Sheriffs and their Ministers, by reason whereof many substantial persons, the Kings true Subjects, have been wrongfully Indicted of Murders, Felonies, and Misdemeanours: and sometimes by labour of the said Sheriffs and their Ministers, divers great Felonies and Murders have been concealed, &c. For remedy of which mischiefs it is enacted by the said Statute of 3 H. 8. cap. 12. That the Justices of Gaol delivery, or Justices of Peace, whereof one to be of the Quorum, in their open Sessions may reform the panel returned by the Sherif to inquire for the King, by putting to and taking out the names of the persons so impanelled by the discretion of the said Justices, &c. and that the Sherif shall return the panels so reformed. This Act extends only to Justices of Gaol delivery, and of the Peace: The body of the Act for offences is general and evident. Vide Vid. 11 H. 7. c. 24.  
11 H. 7. cap. 24.

Nota Lector, that the aforesaid Parliament of 11 H. 4. begun in Quindena Hilarii, Anno 11 H. 4. and the same term, viz. Hil. 11 H. 4. fo. 41. it was according to the said Act of 11 H. 4. resolved by Gascoign Chief Justice, and all the rest of the Justices, that an Indictment of Felony found by an inquest before 5 H. 4. whereof one was outlawed of Felony, and another was acquitted by the



Stanf. Pl. cor. 87,  
88. F. tit.  
Indictment 25.  
& Coron. 89.  
Br. tit. indict. 2.

Vid. l'Estatures  
de 1 R. 3 cap. 4.  
33 H. 6. c. 2.  
W. 2. cap. 13.  
1 E. 3. stat. 2.  
cap. 17.  
All tending that  
Indictments may  
be duly had.  
Dier 3 Mar. 131,  
132.  
Stanf. pl. cor. 90.  
35 H. 8. cap. 2.

\* Mich. 35 & 36  
El. in the case of  
Francis Dacres.

5 El. cap. 1.

Mich. 6 & 7 El.  
Dier fo. 234.  
Bonners case.

Bra&. lib. 3.  
fo. 154. b.  
*Vincula qui sen-*  
*sit, didicit succur-*  
*ere vinctis.*  
Bra&. lib. 3. fo.  
105. a.  
Stanford 78.  
Bra&. li. 3. f. 137.  
Note, Shackles  
about the feet  
ought not to be,  
but for fear of  
escape  
Mirror c. 2. §. 9.  
a Brit. c. 5. fo. 14.  
b Cap. 11. fo. 17.

general pardon, so as they were not probi & legales homines, to enquire as the Law willeth, and after the party had pleaded not guilty to the Felony, it was awarded, that all the Indictments by them found, were annulled and made void. Here- with agreeth Stanford in his Pleas of the Crown, fo. 87. & 88. Vide F. tit. Indictment 25. & Coron. 89. and Brook tit. Indictment 2. Note the Act saith, that they were outlawed before themselves, so as the Court may take know- ledge thereof of themselves, or of any other, as amicus curiæ: but the safest way for the party Indicted is to plead, upon his arraignment, the special matter given unto him by the Statute of 11 H. 4. for the overthrow of the Indictment, with such averments, as by Law are required, (agreeable to the opinion of the Lord Brook. ubi supra.) and to plead over to the Felony, and to require Counsel lear- ned for the pleading thereof, which ought to be granted; and also to require a copy of so much of the Indictment, as shall be necessary for the framing of his plea, which also ought to be granted. And these Laws made for indifferency of In- dicters, ought to be construed favourably, for that the Indictment is commonly found in the absence of the party, and yet it is the foundation of all the rest of the proceeding.

To draw to an end concerning Trials: It is regularly true, that by the Com- mon Law the Trial shall be in the County, where the Indictment is taken: and by the aforesaid Act of 35 H. 8. Treasons and Conspiracy of Treasons committed or done out of the Realm, &c. shall be enquired of, heard, and determined before the Justices of the Kings Bench, &c. Now the case fell out upon this Statute to be thus: \* One was Indicted before the Justices of the Kings Bench, at the Term holden at Hertford by a Jury of the County of Hertford, for divers High Treasons committed out of this Realm, and after the Term was adjourned to Westm. in the County of Midd. The question was, by which of the Counties the party In- dicted should be tried: And it was resolved, that he should be tried by men of that County where the Indictment was taken. But otherwise it is upon the Statute of 5 El. ca. 1. the case being, that Horn Bishop of Winch. tendered to Edmond Bonner late Bishop of London, in the County of Surrey, within his Diocese, the Oath of Supremacy according to the Act of 1 Eliz. which Bonner refused, and this was certified by the Bishop of Winch. into the Kings Bench, then sitting at Westminster in the County of Midd'. Now by the Statute of 5 El. he that refuseth the Oath is to be Indicted of a Præmunire by a Jury of Midd' as a Jury of that County might do for any offence done in that County, and extendeth only to the Indictment, where the words of the Act of 35 H. 8. be, [shall be enquired of, heard, and determined,] the question upon the Statute of 5 Eliz. was, if Bon- ner should appear and plead not guilty, by what County he should be tried, whe- ther by a Jury of Midd' where the Indictment was, or by a Jury of Surrey, where the offence was committed; and resolved that he should be tried by a Jury of Surrey: for the Statute of 5 El. extendeth to the Indictment only, and leaveth the trial to the Common Law, which appointeth the trial to be, where the offence is committed, and so a manifest diversity between the two cases: for regularly by the Common Law in all Pleas of the Crown, Debet quis juri subjacere, ubi deliquit.

It is now necessary to be known, how Prisoners (to speak once for all) com- mitted for Treason, or any other offence ought to be demeaned in Prison. Bracton saith, Solent præsidere in carcere continendos damnare, ut in vinculis contineantur, sed hujusmodi interdicta sunt a lege, quia carcer ad continendos, non ad punien- dos haberi debeat: And in another place he saith, Cum autem taliter captus co- ram Justic. est producendus, produci non debet ligatis manibus, (quamvis interdum gestans compedes propter evasionis periculum) & hoc ideo, ne videatur coactus ad aliquam purgationem suscipiendam.

a If Felons come in Judgment to answer, &c. they shall be out of Irons, and all manner of Bonds, so that their pain shall not take away any manner of reason, nor them constrain to answer, but at their free will. b And in another place he saith, and of Prisoners we will that none shall be put in Irons, but those which



which shall be taken for Felony, or Trespas in Parks or Ubaries, or which be found in arrearages upon account, and we defend that other wise they shall not be punished nor tormented. *c Omnes autem attachabiles licet vicecomiti in prisona custodire, &c. non tamen ad puniend', sed ad custodiend', &c. d It is an abuse that prisoners be charged with Irons, or put to any pain before they be attainted.*

W. 2. c. 1. after judgment.  
Lib. 3. fo. 41.  
Lib. 8. fo. 100.  
24 H. 8. Dier 249.  
Pl. Com. 360. a.  
*c Fleta li. 1. ca. 26.*  
*d Mirror c. 5. §. 1.*  
*e 8 E. 2. cor. 4. 32.*  
*f Tr. 7 E. 3. coram rege Rot. 44.*

*e Quidam sacerdos arraniatus de feloniam posuit se super patriam, & stetit ad barram in ferris, sed per preceptum Justic. liberatur a ferris. And there is no difference in Law, as to a Priest and a Lay man, as to Irons.*

*f Presentat quod ubi quidam Robertus Bayhens de Tanesby captus fuit, & in prisona castri Lincoln detentus pro quodam debito Statut. mercatorii in custodia Tho. Boteler Constabularii castri de Lincoln ibi præd. Tho. le Boteler posuit ipsum Robertum in profundo Gaole inter lenones in vili prisona contra \* formam Statut. &c. & eodem profundo detinuit, quousque idem Robertus fecit finem cum eo de 40 s. quos ei solvit per extorsionem.*

\* 1 E. 3. c. 7.

So as hereby it appeareth, that where the Law requireth that a prisoner should be kept in salva & arcta custodia, yet that that must be without pain or torment to the prisoner.

Whereupon two questions do arise, when and by whom the Rack or Brake in the Tower was brought in.

To the first, John Holland Earl of Huntingdon, was by King H. 6. created Duke of Exeter, and Anno 26 H. 6. the King granted to him the office of the Constableship of the Tower: He and William de la Poole Duke of Suffolk, and others, intended to have brought in the Civil Laws. For a beginning whereof, the Duke of Exeter being Constable of the Tower first brought into the Tower the Rack or Brake allowed in many cases by the Civil Law: and thereupon the Rack is called the Duke of Exeters Daughter, because he first brought it thither.

Tortures, the rack, &c.

Rot. Pat. 26 H. 6.

Rot. Parl. 28 H. 6. nu. 30.

Hollenshed. pa. 670. &c.  
Innocentem cogit mentiri dolor.  
Fortescue. ca. 24. fo. 24.

To the second upon this occasion, Sir John Fortescue Chief Justice of England, wrote his Book in commendation of the Laws of England, and therein preferreth the same for the government of this Countrey before the Civil Law; and particularly that all tortures and torments of parties accused were directly against the Common Laws of England, and sheweth the inconvenience thereof by fearful example, to whom I refer you being worthy your reading. So as there is no Law to warrant tortures in this Land, nor can they be justified by any prescription being so lately brought in.

And the Poet in describing the iniquity of Rhadamanthus, that cruel Judge of Hell, saith,

Castigatque, auditque dolos, subigitque fateri.

Virgil.

First, he punished before he heard, and when he had heard his denial, he compelled the party accused by torture to confess it. But far otherwise doth Almighty God proceed postquam reus diffamatus est. 1. Vocat. 2. Interrogat. 3. Judicat. To conclude this point, it is against Magna Carta cap. 29. Nullus liber homo, &c. aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, aut per legem terræ. And accordingly all the said ancient Authoys are against any pain, or torment to be put or inflicted upon the prisoner before attainder, nor after attainder, but according to the judgment. And there is no one opinion in our Books, or judicial Record (that we have seen and remember) for the maintenance of tortures or torments, &c.

Luke 16. 1, 2, &c.  
John 7. 51. Nunquid lex nostra iudicat hominem nisi prius audierit ab ipso?

And now, to conclude this Chapter of Treason. It appeareth in the holy Scripture, that traitors never prospered, what good soever they pretended, but were most severely and exemplarily punished: As *a* Corah, Dathan and Abiram, by miracle: *Dirupta est terra sub pedibus eorum, & aperiens os suum devoravit illos, &c. b* Athalia the daughter of Amri, interfecta est gladio. *c* Bagatha and Thara against Assuerus, Appensus est uterque eorum in patibula. *d* Absolon against David. Suspendus in arbore, & Joab infixit tres Lanceas in corde ejus. *e* Achitophel with Absolon against David. Suspendio interiit, he hanged himself.

Proditor illudic verbis, dum vera bera cudir.  
*a* Numb. 16. 31, 32. & 27. 2.  
*b* 2 Regum 11. 16.  
*c* Esth. 12. 2, 3.  
*d* 2 Sam. 18. 9. 14.

*e* 3 Sam. 17. 23.



f 1 Reg. 2. 26, 27. himself. f Abiathar the traitterous High Priest against Solomon. Abiathar Sacerdoti dixit Rex, &c. Et quidem vir mortis es, sed hodie te non interficiam, &c. Ejecit ergo Solomon Abiathar, ut non esset Sacerdos. g Shimei against David, gladio interfectus. b Zimri against Ela, who burnt himself. i Theudas (qui occisus est, & circiter 400 qui credebant ei, dispersi sunt & redacti ad nihilum) and Judas Galilæus, ipse periit, & omnes quotquot consenserunt ei, dispersi sunt. Lastly, k Judas Iscariot, secundum nomen ejus vir occisionis, the traytor of traytors, Et hic quidem possedit agrum de mercede iniquitatis suæ, & suspensus crepuit medius, & diffusa sunt omnia viscera ejus.

h 1 Reg. 16. 9. &c. 18.

i Act. Apost. 5. 36, 37.

k Act. Apost. 1. 18.

Math. 27. 5. laqueo

se suspendit.

Qui molitur insidias

in patriam, id facit

quod insanus nauta

perforans navem in

qua ipse vehitur.

\* Felix quem faci-

unt aliena pericula

cautum.

Prov. 24. 21.

Peruse over all our Books, Records, and Histories, and you shall find a principle in Law, a rule in reason, and a trial in experience, That Treason doth ever produce fatal and final destruction to the offender, and never attaineth to the desired end, (two incidents inseparable thereunto.) \* And therefore let all men abandon it; as the most poisonous bait of the Devil of Hell, and follow the precept in holy Scripture, Fear God, honour the King, and have no company with the Seditious,

See more of Treason in the next Chapter of Misprision, &c. and in Principal and Accessory, in the title of Judgment and Execution; and in the Chapter of Monomachia, single combate, &c. the residue of this Act of 25 E. 3.

## CAP. III.

### Of Misprision of Treason.

Misprision proditi-

onis.

See Bract. lib. 3.

fo. 118. b. & 119. a.

See hereafter c. 65.

of misprision, &c.

See hereafter in

Theibore. ca. 61.

1 & 2 Ph. & Mar.

Ubi supra.

See 1 E. 6. c. 12.

and 1 El. ca. 6.

25 H. 8. ca. 12.

\* Hil. 14 El. cited

by the Lord Dier

in the Lord Lum-

leys case. M. S.

a 14 El. ca. 3.

b 13 El. ca. 2.

c 2 R. 3. fo. 9.

Stanf. 57. c.

Misprision cometh of the French word Mespris, which properly signifieth neglect or contempt: for [mes] in composition in the French signifieth mal, as mis doth in the English tongue: as mischance, for an ill chance, and so mesprise is ill apprehended or known. In legal understanding it signifieth, when one knoweth of any Treason or Felony, and concealeth it, this is misprision, so called, because the knowledge of it is an ill knowledge to him, in respect of the severe punishment for not revealing of it: For in case of misprision of High Treason he is to be imprisoned during his life, to forfeit all his goods, debts, and duties for ever, and the profits of his Lands during his life: and in case of Felony, to be fined and imprisoned. And in this sense doth the said Statute of 1 & 2 Ph. & Mar. speak, when it saith, Be it declared and enacted, by the Authority aforesaid, that concealment or keeping secret of any High Treason be deemed and taken only misprision of Treason, and the offenders therein to forfeit and suffer, as in cases of misprision of Treason hath heretofore been used. \* But by the Common law, concealment of High Treason was Treason, as it appeareth in the case of the Lord Scrope, An. 3 H. 5. and by Bracton, lib. 3. fo. 118. b. & 119. a.

a It is misprision of High Treason, for forging of money, which neither is the money of this Realm of England, nor currant within the same.

b Misprision of High Treason is concealing of a Bull, &c. See the Statute.

c It is said in 2 R. 3. that every Treason or Felony includeth in it a misprision of Treason or Felony. Therefore if any man knoweth of any High Treason, he ought with as much speed as conveniently he may to reveal the same to the King, or some of his Privy Council, or any other Magistrate. And misprision in a large sense is taken for many great offences, which are neither Treason nor Felony, whereof we shall speak more hereafter, being in this place restrained to misprision of Treason.

See John Coniers Case Dier 296. That the receiving of one that hath counterfeited the King's Coin, and comforting of him knowing him to have counterfeited the King's Coin, is but misprision.

See more of misprision of Treason in the Chapters of High Treason, and of Principal and Accessory.

CAP.



## C A P. IV.

Felony by compassing or conspiring to kill the  
King, or any Lord, or other of the  
Kings Counsel.

**N**Ext hereunto we have thought good to speak of the Statute of 3 H. 7. the 3 H. 7. cap. 14.  
letter of which Law ensueth.

*Item,* **F**Orasmuch as by quarrels made to such as have been in great Authority, Office, and of Counsel with Kings of this Realm, hath ensued the destruction of Kings, and the undoing of this Realm; so as it hath appeared evidently, when compassing of the death of such as were of the Kings true Subjects was had, the destruction of the Prince was imagined thereby: and for the most part it hath grown, and been occasioned by envy, and malice of the Kings own household-servants; as now of late such a thing was likely to have ensued: \* And \* Nota. for so much as by the Law of this Land, if actual deeds be not had, there is no remedy for such false compassings, imaginations, and confederacies had against any Lord, or any of the Kings Counsel, or any of the Kings great Officers in his Household, as Steward, Treasurer, and Comptroller: and so great inconveniencies might ensue, if such ungodly demeaning should not be straitly punished before that actual deed were done. Therefore it is ordained by the King, the Lords Spiritual and Temporal, and the Commons of the said Parliament assembled, and by authority of the same, That from hence forward, the Steward Treasurer, and Comptroller of the Kings House for the time being, or one of them, have full authority and power to enquire by Twelve sad men, and discreet persons of the Chequer Roll of the Kings honourable household, if any servant admitted to be his servant sworn, and his name put into the Chequer Roll of his Household, whatsoever he be, serving in any manner, office, or room, reputed, had and taken, under the state of a Lord, make any confederacies, compassings, conspiracies, or imaginations with any person or persons, to destroy or murder the King, or any Lord of this Realm, or any other person sworn to the Kings Counsel, Steward, Treasurer, or Comptroller of the Kings House; that if it be found before the said Steward for the time being, by the said twelve sad men, that any such of the Kings Servants as is abovesaid, hath confederated, compassed, conspired, or imagined, as is abovesaid, that he so found by that Inquiry, be put thereupon to answer. And the Steward, Treasurer, and Comptroller, or two of them have power to determine the same matter according to the Law. And if he put him in trial, that then it be tried by other twelve sad men of the same Household: and that such misdoers have no challenge, but for malice. And if such misdoers be found guilty by confession, or otherwise, that the said offence be judged felony, and they to have judgment and execution as Felons attainted ought to have by the Common Law.

*This*



This Act divideth it self into Two general parts, viz. the Preamble, and the body of the Act. In the Preamble Thre things are to be observed.

1. That by quarrels made to such, as are in great Authority, Office, and of Counsel with the Kings of the Realm, have ensued the destruction of the Kings, and the undoing of the Realm, as in the Records of Parliament, and Histories of King E. 2. R. 2. King H. 6. &c. you may read. And as King William Rufus was slain in the new Forrest by the glance of an Arrow, so the overthrow of the King, &c. hath followed by glances, and consequents, when the bow of destruction hath been aimed at the overthrow of those, who were in great Authority neer about, and dear to the King, not daring in direct manner to aim at the King himself. Therefore the first conclusion is, that when the compassing of the death of such as were of the Kings true Subjects was had, the destruction of the Prince was imagined thereby.

2. That for the most part, it hath grown by envy and malice by the Kings own Household-servants: and the reason thereof is, for that they being of the Kings Household, have greater and readier means either by night, or by day to destroy such as be of great Authority, and neer about the King: and such an attempt and conspiracy was before this Parliament made by some of this Kings Household-servants, and great mischief was like thereupon to have ensued, which was the cause of the making of this Act.

See before in the  
chapt. of High  
Treason. Verb.  
Overt Act.

3. The conclusion of the Preamble is, That by the Law of the Land, if actual deeds be not had, there is no remedy for such false compassings, &c. This is a true declaration: For the bare conspiracy of the death of any Lord or other of the Kings Council, or of the Steward, Treasurer, or Comptroller, unless they had been slain indeed, was no Felony before this Act, and so resolved upon the contempt and conspiracy aforesaid.

In the body of this Act, Six things are enacted. First, That the offender must have three qualities. 1. He must be the Kings servant sworn. 2. His name must be put in the Chequer Roll of the Kings Household. 3. He must be under the state of a Lord: and if he conspire with any other, that is not of the Kings Household, yet is the conspiracy within this Act, but he of the Kings Household is only the felon within the purview of this Statute, as it appeareth by the words of the Statute.

See before in the  
chapt. of High  
Treason. Ubi sup.

Secondly, Against what persons the offence made Felony by this Act is to be committed: and in number they be Four. 1. To destroy or murder the King. By this Act it expressly appeareth by the judgement of the whole Parliament, that besides the confederacy, compassing, conspiracy, or imagination, there must be some other overt act or deed tending thereunto, to make it Treason within the Statute of 25 E. 3. And therefore the bare confederacy, compassing, conspiracy, or imaginations by words only, is made Felony by this Act. But if the Conspirators do provide any weapon, or other thing, to accomplish their devilish intent, this and the like is an overt act to make it Treason. 2. Any Lord of this Realm being sworn of the Kings Council: for by the Purview of this Act, he must be also of the Kings Council: this is understood of the Kings Privy Council, and so throughout the Act. 3. Any other of the Kings Council (that is, the Kings Privy Council) being under the degree of a Lord. 4. The Steward, Treasurer, and Comptroller of the Kings Household, being great Officers, though they be not of the Kings Council.

Thirdly, The third general part expresseth the persons to whom power is given to enquire and determine this Felony. The Steward, Treasurer, and Comptroller, or any one of them may enquire. And they or two of them have power by this Act to hear and determine the same: and though the words be for the Inquiry, that they three, or any of them, &c. yet an Indictment taken before two of them is good, because it is for advancement of Justice. And this Act is in nature of a Commission to them, for other Commission they need not to have: and this you may see in divers other Acts of Parliament of like nature. If any the household servants conspire the death of the Steward, Treasurer, and Comptroller, yet by force of this Act they are Judges of the cause, and none other can be, and in that case, they

18 E. 3. 1.  
23 Ass. 17.  
27 H. 6. 8.  
27 H. 8. 13.



they will assist themselves for their direction, with some grave and learned men in the Laws. But if the death of any one of them be compassed, then it is more convenient that it be heard and determined before the other two.

Fourthly, the fourth part setteth forth, first, how the Inquiry, and after the trial shall be made, that is, that the Inquiry must be made by twelve sad men and discreet persons of the Cheque Roll of the Kings household: and when the offender hath pleaded not guilty, the trial shall be by the like persons. And here though this Act limiteth the inquiry to be by twelve, yet if it be Inquired of by more then twelve, the presentment is good, but the trial must be by twelve only.

Fifthly, no challenge shall be made, but for malice.

Sixthly, by the context of the whole Act, the conspiracy, that is to be heard and determined by this Act, must be plotted to be done within the Kings household. Vide lib. Plac. Coke fo. 482.

The offender against this Statute shall have the benefit of his Clergy: for whensoever Felony is made by any Statute, and the benefit of Clergy is not expressly taken away, the offender shall have his Clergy.

See the Statute of 3 & 4 E. 6. whereby amongst other things in some case it was High Treason, and in some case Felony, to intend, or go about to kill, or imprison any of the Kings Privy Council, &c. from which Felony, the benefit of Sanctuary and Clergy was taken away: but these Treasons and Felonies are repealed by the Statute of 1 Mar. 3 & 4 E. 6. ca. 3.

## CAP. V.

### Of Heresie.

**C**oncerning Heresie five things fall into consideration. First, who be the Judges of Heresie. Secondly, what shall be adjudged Heresie. Thirdly, what is the judgment of a man convicted of Heresie. Fourthly, what the Law alloweth him to save his life. Fifthly, what he shall forfeit by judgment against him.

Touching the First, an Heretick may be convicted a before the Archbishop and other Bishops, and other the Clergy at a general Synod, or Convocation, as it appeareth both by our books, and by History. See the Statute of 25 H. 8. cap. 19. revived by 1 El. cap. 1. 2 Brañ. l. 3. fo. 123. & 124. in Conc' Oxon. Newburg. li. 2. ca. 13. 6 H. 3. Stow. Holl. 203. 2 H. 4. Rot. Parl. nu. 29. Sauries case. Fitz. N. B. 269. a. 1 El. ca. 1. 6 Vid. 23 H. 8. ca. 9. F. N. B. Ubi supra. 5 El. ca. 23. 10 H. 7. 17. b. Doct. & Stud. lib. 2. ca. 29. Br. 2. Mar. tit. Heresie 1.

b And the Bishop of every Diocess may convict any for Heresie, and so might he have done before the Statute of 2 H. 4. ca. 15. as it appeareth by the Preamble of that Act in these words.

Whereas the Diocesans of the said Realm cannot by their Jurisdiction Spiritual, without aid of the said Royal Majesty, sufficiently correct the said false and perverse people, (i Heretiques, named before) because the said false and perverse people do go from Diocess to Diocess, and will not appear before the said Diocesans, but the same Diocesans and their Jurisdiction Spiritual, and the keys of the Church with the censures of the same, do utterly contemn and despise.

Now that Statute doth provide, that the Diocesan of the same place, such person or persons, &c. may cause to be arrested, and under safe custody in his prisons to be detained. From this Act and other Acts and Authorities quoted in the margent, these Two conclusions are to be gathered. First, that the Dio-



Mat. Hammond  
Anno 21 El.  
Holl. 1579.  
Stowe. 1161.  
Hil. 9. Ja. Regis.  
Legates case.

Vide 1 E. 6. c. 12.  
1 El. c. 1.

23 H. 8. ca. 9.

1 El. ca. 1.

5 R. 2. Stat. 2.  
cap. 5. repealed by  
1 E. 6. c. 12. &  
1 Eliz. ca. 1.  
\* In diebus illis  
M<sup>st</sup>ers of Divi-  
nity (and Batche-  
lors of Divinity)  
now Doctors of  
Divinity and  
Batchelors.  
a Rot. clauf. 19 R. 2.  
m. 17. in Dorf.  
b Exod. 20. 4.  
Levit. 26. 1.  
Deut. 5. 8. & 16. 22.  
Psal. 97. 7.  
1 John 5. 21.  
c Rot. Parl. 6 R. 2.  
nu. 62. Vide 7 H. 4.  
nu. 62. Rot. Parl.

cesan hath jurisdiction of Heresie, and so it hath been put in ure in all Quēn Elizabeths reign: and accordingly it was resolved by Flemming Chief Justice, Tanfield Chief Baron, Williams and Crook Justices, Hil. 9. Ja. R. in the case of Legate the Heretique, and that upon a conviction befoze the Ordinary of Heresie, the writ of De hæretico comburendo doth lie. Secondly, that without the aid of that Act of 2 H. 4. the Diocesan could imprison no person accused of Heresie, but was to proceed against him by the censures of the Church. And now seeing, that not only the said Act of 2 H. 4. but 25 H. 8. c. 14. are repealed, the Diocesan cannot imprison any person accused of Heresie, but must proceed against him, as he might have done befoze those Statutes, by the censures of the Church, as it appeareth by the said Act of 2 H. 4. c. 15. Likewise the supposed Statute of 5 R. 2. c. 5. and the Statutes of 2 H. 5. c. 7. 25 H. 8. c. 14. 1 & 2 Ph. & Mar. c. 6. are all repealed, so as no Statute made against Heretiques standeth now in force: and at this day no person can be indicted, or impeached for Heresie befoze any temporal Judge, or other, that hath temporal jurisdiction, as upon perusal of the said Statutes appeareth.

Every Archbishop of this Realm may cite any person dwelling in any Bishops Diocess within his province for causes of Heresie, if the Bishop, or other Ordinary immediate thereunto consent, and if that the same Bishop, or other immediate Ordinary or Judge do not his duty in punishment of the same.

2. Touching the second point, if any person be charged with Heresie befoze the High Commissioners, they have no authority to adjudge any matter or cause to be Heresie, but only such as hath been so adjudged by the authority of the Canonical Scripture, or by the first four general Councils, or by any other general Council, wherein the same was declared Heresie by the expresse and plain words of the Canonical Scripture, or such as shall hereafter be determined to be Heresie by Parliament, with the assent of the Convocation: for so it is expressly provided by the said Act of 1 El. And albeit this Proviso extendeth only to the said High Commissioners, yet seeing in the High Commission, there be so many Bishops, and other Divines, and Learned men, it may serve for a good direction to others, especially to the Diocesan, being a sole Judge in so weighty a cause.

No manner of Order, Act, or Determination for any matter of Religion, or cause Ecclesiastical, had or made by the Authority of the Parliament in Anno 1 El. shall be accepted, deemed, interpreted, or adjudged Heresie, Schism, or Schismatical opinion, any order, decree, sentence, constitution, or Law (whatsoever the same be) notwithstanding.

There was a Statute supposed to be made in 5 R. 2. that Commissions should be by the Lord Chancellor made, and directed to Sheriffs, and others, to arrest such as should be certified into the Chancery by the Bishops and Prelates, \* Masters of Divinity, to be preachers of Heresies, and notorious errors, their fautors, maintainers and abettors, and to hold them in strong prison, until they will justify themselves to the law of Holy Church. By colour of this supposed Act, a certain persons that held, that images were not to be worshipped, &c. were holden in strong prison, until they (to redeem their veration) miserably yielded befoze these Masters of Divinity to take an Oath, and did swear to worship Images, which was against the moral and eternal Law of Almighty God. We have said (by colour of the said supposed Statute, &c.) not only in respect of the said opinion, but in respect also, that the said supposed Act, was in truth never any Act of Parliament, though it was entred in the Rolls of the Parliament, for that the Commons never gave their consent thereunto. And therefore in the next Parliament, the Commons preferred a Bill reciting the said supposed Act, and constantly affirmed, that they never assented thereunto, and therefore desired that the said supposed Statute might be annulled, and declared to be void: for they protested, that it was never their intent to be justified, and to bind themselves and their successors to the Prelates, more then their Ancestors had done in times past: and hereunto the King gave his royal assent in these words, y pleist au Roy.



Roy. And mark well the manner of the penning of the Act: for seeing the Commons did not assent thereunto, the words of the Act be, It is ordained and assented in this present Parliament, that, &c. And so it was, being but by the King and the Lords.

It is to be known, that of ancient time, when any Acts of Parliament were made, to the end the same might be published, and understood, especially before the use of Printing came into England, the Acts of Parliament were ingrossed into parchment, and bundled up together with a writ in the Kings name, under the great Seal to the Sherif of every County, sometime in Latin, and sometime in French to command the Sherif to proclaim the said Statutes within his bayliwick, as well within liberties, as without. And this was the course of Parliamentary proceedings, before Printing came in use in England, and yet it continued after we had the print, till the reign of H. 7.

Now at the Parliament holden in 5 R. 2. John Braibrook Bishop of London being Lord Chancellor of England, caused the said Ordinance of the King and Lords to be inserted into the Parliamentary writ of Proclamation to be proclaimed amongst the Acts of Parliament: which writ I have seen, the purclose of which writ, after the recital of the Acts directed to the Sherif of N. is in these words. Nos volentes dictas concordias, live ordinationes in omnibus & singulis suis Articulis inviolabiter observari, tibi præcipimus quod prædictas concordias, live ordinationes in locis infra ballivam tuam, ubi melius expedire volueris, tam infra libertates, quam extra, publice proclamari, & teneri facias juxta formam prænotatam. Teste Rege apud Westm. 26 May, Anno regni Regis R. 2. 5. But in the Parliamentary proclamation of the Acts passed in Anno 6 R. 2. the said Act of 6 R. 2. whereby the said supposed Act of 5 R. 2. was declared to be void, is omitted: and afterwards the said supposed Act of 5 R. 2. was continually Printed, and the said Act of 6 R. 2. hath by the Prelates been ever from time to time kept from the Print.

Certain men called Lollards were indicted for Heresie, upon the said Statute of 2 H. 4. for these opinions, viz. Quod non est meritum ad Sanctum Thomam, nec ad Sanctam Mariam de Walsingham peregrinari. 2. Nec imagines Crucifixi & aliorum Sanctorum adorare. 3. Nulli sacerdoti confiteri nisi soli Deo, &c. Which opinions were so far from Heresie, as the makers of the Statute of 1 El. had great cause to limit what Heresie was.

And afterwards they thought not good to contain these opinions in any Indictment, but indicted them in general words, one of which indictments as to Lollards by and Heresie followeth. Jurati dicunt super eorum Sacramentum, quod A. R. E. D. Lollardi & falsi hæretici die Jovis post hebdomadam Paschæ, Anno regni Regis H. 6. post conquestum Nono, apud Abendon in Com Berks infra virg. falso & proditorie ut communes proditores, & insurrectores conspiraverunt, imaginati fuerunt, & ad invicem confederaverunt cum quamplurimis proditoribus illis associatis, & felonibus de eorum comitiva, & eorum falsa malitia præcogitata, ut communes Insidiatores altorum viarum, ad fidem catholicam destruendam, & ibidem falso & proditorie ut communes proditores, & felones dicti dñi Regis fecerunt, & scripserunt diversas falsas billas, & scripturas seditiosas, & nonnulla fidei & doctrinæ Christianæ contraria continentes, & eas populo domini regis publicandas & credendas falso, damnabiliter in diversis locis, viz. in civitatibus London, Sarum, & villis de Coventria & Marleburgh, nequiter posuerunt, fixerunt, & projecerunt, ac indies sic scribere, affigere & projicere & ponere non cessant, nec formidant, in gravissimam majestatis, & coronæ dignitatis Regis nostri offensam, & Christianæ fidei ludibrium, & pacis dicti domini regis perturbationem, & omnium Christi fidelium injuriam & contemptum. Which general indictment, and all other of like form were utterly insufficient in Law: For albeit the words of the Statute be general, yet the indictment must contain certainty, whereunto the party indicted may have an answer. Also where the parties are indicted, ut communes insidiatores viarum, that also is insufficient, as it appeareth by the Statute of 4 H. 4. ca. 2.

Coram Rege Hil:  
1 H. 5. Rot. 4 & 5.

Indictment general.  
Vide supra ca. 1.  
Verbo, Per overt fact.  
Lollardi & falsi hæretici.

Communes Insidiatores viarum.  
Vide sup. c. 1. f. 5.  
Ad fidem Catholicam destruendam.  
Diversas falsas billas & scripturas;  
&c.



Mich. 5 E. 4. Rot.  
143. Coram Rege.  
In rationabili par-  
te bonorum.

John Keyser was excommunicated by the greater excommunication before Thomas Archbishop of Canterbury, and Legate of the Apostolique See, at the suit of another, for a reasonable part of goods, and so remained eight months: The said Keyser openly affirmed that the said sentence was not to be feared, neither did he fear it. And albeit the Archbishop, or his Commissary hath excommunicated me, yet before God I am not excommunicated: and he said that he spake nothing but the truth, and so it appeared: for that he the last harvest standing so excommunicate, had as great plenty of wheat, and other grain, as any of his neighbors, saying to them in scorn (as was urged against him) that a man excommunicate should not have such plenty of wheat. The Archbishop denying these words to be within the said Act of 2 H. 4. did by his warrant in writing comprehending the said cause, by pretext of the said Act commit the body of the said Keyser to the Goal at Maidstone, for that (saith he) in respect of the publishing of the said words, dictum Johannem non immerito habemus de hæresi suspectum. By reason whereof the said John Keyser was imprisoned in Maidstone Goal, and in prison detained under the custody of the keeper there, until by his Counsel he moved Sir John Markham then Chief Justice of England, and other the Judges of the Kings Bench, to have an Habeas Corpus, and thereupon (as it ought) an Habeas Corpus was granted: Upon which writ the Goaler returned the said cause, and special matter, and withall, according to the writ, had his body there. The Court upon mature deliberation perusing the said Statute, (and upon conference with Divines) resolved, that upon the said words Keyser was not to be suspect of Heresie within the said Statute, as the Archbishop took it. And therefore the Court first bayled him, and after he was delivered: for that the Archbishop had no power by the said Act for those words to commit him to prison.

Mich. 11 H. 7.  
Rot. 227. In com-  
muni Banco.

Hillary Warner being an Inhabitant within the Parish of S. Dunstons in the West, held opinion, and published there, and in divers other places, quod non tenebatur solvere aliquas decimas Curatori, five Ecclesiæ parochiali ubi inhabitabat. Whereupon Richard Bishop of London commanded Edward Vaughan and others to arrest the said Hillary Warner: by force whereof they did arrest him, and detained him in prison a day and a night, and then he escaped. Hillary Warner brought his Action of false imprisonment against Edward Vaughan and others: In bar whereof the Defendants pleaded the Statute of 2 H. 4. and that the Plaintiff held and published the opinion aforesaid: which opinion was contra fidem Catholicam, seu Determinationem Sanctæ Ecclesiæ, and that the Defendants, as servants to the said Bishop, and by his commandment did arrest the Plaintiff, and justified the imprisonment: whereupon Hillary Warner the Plaintiff demurred in Law, and after long and mature deliberation it was by Brian Chief Justice, and the whole Court of Common Pleas adjudged, that the said opinion was not within the said Statute of 2 H. 4. for that it was an error, but no Heresie. Which I have the rather reported, for that the Reporter of this case did not only misreport the time of the bringing of the Action, but the Statute, which was the ground of the matter in Law, and leaveth out the judgment. The record it self is worthy the reading.

Hil. 10 H. 7. f. 17.

Upon that which hath been said touching the said Statute of 2 H. 4. Four conclusions do necessarily follow. First that seeing, that many opinions were by the Bishops taken to be Heresie, which in troth had no shadow of Heresie, and so mistaken, and unjustly extended by the Bishops further then the Purvien, and true intention thereof, as by that which hath been, and might be said, appeared, the makers of the said Act of Parliament of 1 El. had great reason to limit (as hath been said) what opinions should be judged Heresie by authority of that commission grounded upon that Act. Secondly, that if any Ecclesiastical Judge or Commissioner shall by pretext of any Statute, or other cause, commit any man to prison, upon motion in Court on the behalf of the party imprisoned, the Judges of the Common Law ought to grant an Habeas Corpus for him: upon the return of which Writ, it shall appear to the Judges, that the imprisonment is well warranted

See in the second part of the Institutes, the exposition upon the Statute of Artic. Cleri, the resolution of all the Judges of England to the 21 and 22 articles or objections.



warranted by Law, the party shall be remanded: and if the imprisonment be without warrant of Law, then the party ought to be delivered. Thirdly, if the imprisonment be not warranted by Law, the party imprisoned may have his action of false imprisonment, and recover his damages. Fourthly, that when an Act of Parliament is made concerning matter merely spiritual, as Heresie, &c. yet that Act being part of the Laws of the Realm, the same shall be construed and interpreted by the Judges of the Common Laws, who usually confer with those that are learned in that profession. But let us now descend to the third point.

3. To the third. *a* It appeareth by Bracton, Britton, Fleta, Stanford, and all our Books, that he that is duly convicted of Heresie, shall be burnt to death.

4. To the fourth. *b* The Ecclesiastical Judge at this day cannot commit the person that is convicted of Heresie to the Sherif, albeit he be present, to be burnt; but must have the Kings Writ De hæretico comburendo, according to the Common Law: for now all Acts of Parliament (as hath been said before) against Hereticks are repealed. And the reason wherefore Heresie is so extremely and fearfully punished, is, for that Gravius est æternam, quam temporalem lædere majestatem: and Hæresis est lepra animæ. *c* The party duly convicted of Heresie, may recall, and abjure his opinion, and thereby save his life, but a Relapse is fatal: For as in case of a disease of the body, after recovery, recidivation is extremely dangerous: So in case of Heresie (a disease of the Soul) a relapse is irrecoverable. And as he that is a Leper of his body, is to be removed from the society of men, lest he should infect them, by the Kings Writ De leproso amovendo: So he that hath lepram animæ, that is, to be convicted of Heresie, shall be cut off, lest he should poison others, by the Kings Writ De hæretico comburendo. But if the Heretick will not after conviction abjure, he may by force of the said Writ *d* De hæretico comburendo be burnt without abjuration.

5. As to the fifth. *e* The Statute made in the 2 year of H. 5. cap. 7. whereby the forfeiture of lands in fee simple, and goods, and chattels was given in case of Heresie, standeth repealed by the Act of 1 Eliz. cap. 1. The Books that speak of this forfeiture are grounded upon the said Act of 2 H. 5. which then stood in force, saving 5 R. 2. which was before that Statute: for there, though Belknap swore, Perma foy si home soit miscreant, sa terre est forfeitable, & le seignior avera ceo p voy descheat; yet was his opinion never taken for Law; for neither lands nor goods *f* before the making of that Statute of 2 H. 5. were forfeited by the conviction of Heresie, because the proceeding therein is merely spiritual, pro salute animæ, and in a Court that is no Court of Record. And therefore the conviction of Heresie worketh no forfeiture of any thing that is temporal, viz. of lands or goods. *g* For what cause the said Hereticks were called Lollards you may read in Caudries case, and Linwood thereto agreeth. \* And it is to be observed, that in proceeding against Lollards, the Prelates, besides their opinions, did charge them with hainous offences: As conspiracy with multitudes of people, insurrection, rebellion, or some other Treason, or great crimes.

We have spoken thus much of this argument, because there be divers warring opinions concerning some of these points, that are not agreeable to the Law, as it standeth at this day. See the fourth part of the Institutes, cap. Chancery, in the Articles against Cardinal Woolsey. Artic. 44.

*a* Mir. cap. 4. de Majestie. Bracton, ubi sup. Britton cap. 9. Fleta lib. 1. ca. 35. Register. F. N. B. 269. *b* F. N. B. 269. Rot. Par. 2 H. 4. nu. 29. Sautryes case. Breve de hæretico comburendo per regem & concilium in Parliamento. *c* 2 Mar. tit. Heresie. Br. 7.

*d* 2 Mar. ubi sup. *e* Vid. Doct. & Stud. lib. 2. ca. 20. Br. tit. Forfeiture 112. Stan. pl. cor. 35. l. 2 Mar. Br. tit. Heresie.

*f* Vid. hereafter in case of Piracy. *g* Lib. 5. Caudries case. fol. 25. b. \* 1 H. 5. fo. 6. a. Rot. Parl. 5 H. 5. nu. 11. in the case of Sir John Oldcastle. Pasch. 9 H. 6. John Sharps case, &c. Rot. Parl. 7 H. 4. nu. 67. 11 H. 4. nu. 29. 3 H. 5. nu. 39. 1 H. 6. nu. 20.



## C A P. VI.

## Of Felony by Conjuration, Witchcraft, Sorcery, or Inchantment.

a 33 H.8.ca.8.

1 E.6.cap.12.

b Inter leges Al-

veredi fo.23.

Edwardi &amp; Gu-

throni, cap.11.

Ethelstani,ca.6.

Canuti. 4. 5.

c 5 Eliz.ca.16.

1 Jac.cap.12.

A Conjuror de-

scribed.

A Witch descri-

bed.

An Inchanter de-

scribed.

**T**he first Act of Parliament that made any of these offences Felony, was the Statute <sup>a</sup> of 33 H.8. which was repealed by the Statutes of 1 E. 6. cap.12. and 1 Mar. But <sup>b</sup> before the Conquest it was severely punished: sometimes by death, sometimes by exile, &c. <sup>c</sup> And after, it was made Felony by the Statute of 5 Eliz. and again by 1 Jac. which repealeth 5 Eliz.

A Conjuror is he that by the holy and powerful names of Almighty God invokes and conjures the Devil to consult with him, or to do some act.

A Witch is a person that hath conference with the Devil, to consult with him, or to do some act.

An Inchanter, Incantator, is he, or she, qui carminibus, aut cantuunculis Dæmonem adjurat. They were of ancient time called Carmina, because in those days their Charms were in verse.

Carminibus Circe socios mutavit Ulyssis.

By Charms in Rhyme (O cruel Fate !)

Circe transform'd Ulysses mates.

And again. Carmina de Cælo possunt detrudere Lunam.

By Rhymes they can pull down full soon,

From lofty sky the wand'ring Moon.

\* A Sorcerer de-

scribed.

Exod.cap.22.17.

Deut.ca.18.10,

11, 12.

Nu.ca.23.23.

1 Reg.ca.15.23.

d Linwood de of-

ficio Archi-presb.

§ Igneantia.

\* Mir.cap.1. §.5.

& cap.2. §.12.

& cap.4. §. De

Majestie.

Brit.fo.16.b. & 71.

F.N.B. 269.b.

e Int.leges Edw.

ca.11.fo.55.

& Ethelstani ca.6.

fo.60.

& Canuti cap.5.

fo.5.

45 E.3.17.b.

\* Some think that

this should be the

Oath of Allegi-

ance, *Que il serra*

*foial & loial, &c.*

Vid. 25 E.3. 42.b.

coron. 131.

See hereafter

ca. 74. of perjury,

Verb. That as

well the Judge,

&c.

\* A Sorcerer, Sortilegus, quia utitur sortibus in cantationibus Dæmonis. Thou shalt not suffer a Witch to live. Non est augurium in Jacob, nec divinatio in Israel. And the Holy Ghost hath compared the great offence of Rebellion to the sin of Witchcraft.

And here it justly may be demanded, what punishment was against these devilish and wicked offenders before these statutes, which were made of very late time.

And it appeareth by our ancient <sup>d</sup> books that these horrible and devilish offenders, which left the everliving God, and sacrificed to the Devil, and thereby committed Idolatry, in seeking advice and aid of him, were punished by death.

\* The Mirroz saith, Que sorcery & devinal sont members de Heresie. And there he describeth Heresie. Heresie est un mauuase & faux creance surdant de error en la droit foy. Christien: and after saith, Le judgement de Heresie est d'ee arse in cendre. And herewith agreeth Britton: Sorcerers, Sorceresses, &c. & miscreants soient arses. And Fleta: Christiani autem Apostata, sortilegi, & hujusmodi detractari debent, & comburi. And burning then was, and yet is the punishment for Hereticks. So as the consufance of these offences, if they be branches of Heresie, (as the Law was then taken) belonged (as to this day Heresie doth) to Ecclesiastical Judges. In which case when they have given sentence, there lieth a Writ De hæretico comburendo.

I have seen a report of a case in an ancient Register. that in October Anno 20 H.6. Margery Gurdeman of Eye, in the County of Suffolk, was for Witchcraft and consultation with the Devil, after sentence and a relapse, burnt by the Kings Writ De hæretico comburendo. <sup>e</sup> And this agreeth with Antiquity, for Witches, &c. by the Laws before the Conquest were burnt to death.

A man was taken in Southwark with a head and a face of a dead man, and with a book of Sorcery in his Dale, and was brought into the Kings Bench before Sir John Knevert then Chief Justice: but seeing no indictment was against him, the Clerks did swear him, that from thenceforth <sup>\*</sup> he should not be a Sorcerer, and was delivered out of prison, and the head of the dead man and the book of

of



of Sorcery were burnt at Tuthill at the costs of the prisoner. So as the head and his book of Sorcery had the same punishment, that the Sorcerer should have had by the ancient Law, if he had by his Sorcery prayed in the aid of the Devil.

The Holy History hath a most remarkable place concerning the reprobation and death of King Saul. Mortuus est ergo Saul propter iniquitates suas, eo quod prævaricatus sit mandatum Domini, & non custodierit illud, \* sed insuper Pythonissam consuluerit, nec speraverit in Domino, propter quod interfecit eum, & transtulit regnum ejus ad David filium Isai. So Saul died for his transgression which he committed against the Lord, even against the Word of the Lord which he kept not: And also for asking counsel of one that had a Familiar Spirit, to enquire of it, and enquired not of the Lord; therefore he slew him, and turned the Kingdom unto David the son of Isai.

1 Chron chap. 10.  
v. 13, 14.  
1 Reg. 15. 23.  
\* Nota.  
1 Reg. 28. 8.

Therefore it had been a great defect in government, if so great an abomination had passed with impunity. And this is the cause, that we have proved how and in what manner Conjuration, Witchcraft, &c. were punished by death, &c. before the making of the said late Statutes.

But now let us peruse the Statute made in the First year of King James, which only standeth in force, and divideth it self into five several branches.

1 Jac. cap. 12.

1. ¶ If any person or persons shall use, practise, or exercise any Invocation or Conjuration of any evil and wicked Spirit.

Here the Devil by the holy, and powerful names of Almighty God is invoked (as hath been said:) and this Invocation, or Conjuration of a wicked Spirit is Felony, without any other act or thing, save only the apparition of the Spirit See W. 1. cap. 41. in the Oath of the Champion, &c.

2. ¶ Or shall consult, covenant with, entertain, employ, feed, or reward any evil or wicked Spirit, to, or for any intent or purpose.

By this branch, if any consult, &c. (howsoever the wicked spirit appeareth and cometh) these actions (here mentioned) with or to that wicked spirit, to or for any intent or purpose, is Felony without any other act or thing.

3. ¶ Or to take up any dead man, woman, or child, out of his, her, or their grave, or any other place where the dead body resteth, or the skin, bone, or any part of a dead person, to be employed or used in any manner of Witchcraft, Sorcery, Charm, or Incantment.

Albeit the offender that commits these barbarous and inhumane dealings with the bodies of the dead, do not actually employ or use them in witchcraft, sorcery, charm, or incantment: yet if he did them of purpose to use therein, it is Felony, for the words of this branch be, [to be employed or used in any manner of witchcraft, &c.]

4. ¶ Or shall use, practise, or exercise any Witchcraft, Incantment, Charm or Sorcery, whereby any person shall be killed, destroyed, wasted, consumed, pined, or lamed, in his, or her body, or any part thereof.

By this branch no other witchcraft, incantment, charm, or sorcery (then is before specified) is Felony, unless by means thereof some person be killed, destroyed, wasted, consumed, pined or lamed, &c. Which words have reference only to this last general clause.

5. ¶ That then every such offender or offenders, their aiders, abettors, and counsellors, being of any the said offences duly and lawfully convicted and attainted, shall suffer pains of death, as a Felon, or Felons, and shall lose the privilege and benefit of Clergy and Sanctuary.

Albeit accessories before be here specially named, yet accessories after may be of this Felony, as afterwards is said upon the Statute of 3 H. 7. for taking away of women, and upon the Statute of 8 H. 6. for stealing of Records.

The second part of this Act concerneth Felony in a second degree: and the branches thereof are also in number five.

¶ 1. If



¶ 1. If any person or persons take upon him or them, by Witchcraft, Inchantment, Charm, or Sorcery, to tell or declare in what place any treasure of Gold or Silver should or might be found, or had in the earth, or other secret places.

The mischiefs before this part of the Act was: That divers Impostors, Men and Women would take upon them to tell, or do, these Five things here specified, in great deceit of the people, and cheating and coustening them of their money, or other goods. Therefore was this part of the Act made, wherein these words [take upon him or them] are very remarkable. For if they take upon them, &c. though in truth they do it not, nor can do it, yet are they in danger of this first branch.

¶ 2. Or where goods, or other things lost or stolln, should be found or become.

Herein they become offenders, if they take upon them as aforesaid. And note, the taking upon them to tell and declare, govern both these branches.

¶ 3. Or to the intent to provoke any person to unlawful love.

Herein also they become offenders, by taking upon them, as is aforesaid. Here is the change of a new Verb, viz. [to provoke] So as the sense is, If any person or persons shall take upon him or them by witchcraft, inchantment, charm, or sorcery, to the intent, to provoke any person to unlawful love.

¶ 4. Or whereby any Cattel or Goods of any person shall be destroyed.

The Letter of this branch is this: If any person shall take upon him by witchcraft, inchantment, charm or sorcery, whereby any cattel or goods of any person should be destroyed. Although this be not sententious, yet the meaning thereof is to be taken, by supplying these words after sorcery [any thing] and not to turn [destroyed] into the Infinitive Word, as the rest be; for then it satisfieth not the meaning of the makers: for a taking upon them to destroy cattel, &c. if they be not destroyed, is not within the danger of this Act, and therefore must be supplied as is aforesaid.

¶ 5. Or to hurt or destroy any person in his or her body, although the same be not effected or done.

As in the case of cattel or goods, the destruction must be (as is aforesaid) effected and done: so in case of the person of man, woman, or child, though the hurt be not effected or done; yet is the taking upon him, &c. to hurt or destroy any person, &c. within this branch.

¶ Being therefore lawfully convicted.

Here [convicted] is taken in a large sense for attainted, and the rather, for that after in this Act the words be [lawfully convicted and attainted, as is aforesaid.]

¶ Shall for the said offence, &c.

Here are expressed the punishments inflicted upon these Impostors, Mountebanks, and cheating Quack-salvers, viz. 1. To suffer imprisonment by the space of a whole year without bail or mainprize. 2. Once every Quarter of the year these Mountebanks are to mount the Pillory, and to stand thereupon in some Market Town six hours, and there to confess his or her error, and offence.

¶ And if any person being once convicted of the same offences, &c.

Here is also [convicted] taken for attainted, for he shall not be drawn in question for the second offence, to make it Felony, till judgment be given against him for the first; for the Indictment of Felony recites the former attainder, and the second offence must be committed after the judgment. And so it is in the case of Forgery upon the Statute of 5 Eliz. and in case of conveying of Shæp alive out of this Realm, and some others.

¶ Saving to the wife of such persons as shall offend in any thing contrary to this Act, her title of Dower, and also to the heir and successor



cessor of every person, his or their titles of inheritance, succession, and other rights, as though no such attainder of the Ancestor or Predecessor had been made.]

The judgment against a Felon is, that he shall be hanged by the neck until he be dead: and albeit nothing else is expressed in the judgment, yet by the Common Law many things are therein implied; as the loss of his wives Dower, the loss of his inheritance, corruption of his blood, forfeiture of his goods, &c. Now a saving will serve for any thing, that is implied in the judgment, as in this case for the Wives Dower, and also for the Heirs Inheritance, and for all the rest of the things implied in the judgment. But a saving will not serve against the express judgment in case of Felony, for that should be repugnant; as saving the life of the offender should be void, because it is repugnant to the express judgment, viz. That he shall be hanged by the neck until he be dead. Also where the saving is to the heir, it is well saved by the name of the heir, because notwithstanding the forfeiture implied in the judgment, his Inheritance is saved, and by consequent the blood not corrupted, for if the blood were corrupted, he could not inherit as heir, but notwithstanding this saving, the Lands are forfeited during his life.

See the 1 part of the Institutes. §. 147.

Vide lib. 1. in the case of Alton Woods. fo.

The Statute of 5 Eliz. for preservation of the Wives Dower, and the heirs Inheritance, in case of Forgery, is penned in this form, Provided alway, that such attainder of Felony shall not in any wise extend to take away the Dower of the Wife of any such person attaint: nor to the corruption of blood, or disherison of any heir or heirs of any such person attaint.

§ El. ca. 14.

The words of the Statute of 8 Eliz. be, Provided always, that this Act shall not extend to corruption of blood, or be prejudicial or hurtful to any woman claiming Dower by or from any such offender, &c. Wherein it is to be observed, that by the avoidance of corruption of blood, the inheritance is impliedly saved. See the manner of the penning of the Act of 31 Eliz. concerning this matter and divers others.

8 El. ca. 3.

31 El. ca. 4.

And surely it is very convenient, that when new Felonies be made by Act of Parliament, that such savings or provisions be made both for the Wives Dower, and the Heirs Inheritance, as were had and made in these precedents.

See the Statute of 3 Ja. ca. 4.

## C A P. VII. Of Murder.

**H**AVING now passed High Treason, Petit Treason, Disprision of Treason, Felony by the Statute of 3 H. 7. Heresie and Conjuratton, Witchcraft, &c. We are next in order to treat of Felonies in general: and of all Felonies, Murder is the most hainous. Inter leges Canuti, ca. 61. fo. 118. Cædes manifestæ numerantur inter scelera nullo humano jure expiabilia. See here ca. Pardon. And of all murders, murder by poisoning is the most detestable. Therefore first of Murder. Murdrum is derived of the Saxon word Mord.

*b* Murder is when a man of sound memory, and of the age of discretion, unlawfully killeth within any County of the Realm any reasonable creature in rerum natura under the Kings Peace, with malice forethought, either expressed by the party, or implied by Law, so as the party wounded or hurt, &c. die of the wound or hurt, &c. within a year and a day after the same.

Hereof we will speak, together with some things concerning the accessories to the same, and leave the residue to others that have written thereof. Now let us examine the principal parts of this description.

cap. 1. §. ca. 2. §. 11. de Appel de homicide. \* Tr. 32 E. 1. Coram Rege Rot. 15 25 E. 3. 28. 26 Ass. p. 27. 3 E. 3. cor. 383. 3 H. 7. ca. 1. 3 H. 7. 1. 12. 21 H. 7. 31. E. 2. Coron. 389. 1 Ma. Dier 104. b. See the first part of the Instit. 104.

*a* See the first part of the Instit. for the word Murder. §. 287. and for Felony. §. 500. & 745. See the 2 part of Instit. Marl. c. 25. Cust. de Norm. ca. 68.

*b* The definition of Murder. Vid. devanc. ca. Treason. Verb. Quant home, &c. Brañ. l. 3. fol. 120. 121, 124, 135. Brit. fo. 5. 18. Fleta lib 1. ca. 23. & 30. Mirror



Trin. 31 E. 3.  
Coram Rege.  
Ro. 4. Per  
morf. canis.

Brat. l. 3. fo. 121.  
Bri. fo. 14.  
See lib. Intr.  
Coke 25.  
Lib. 4. fo. 44.  
Vauxes case.  
Lib. 9. fo. 81.  
Agnes Gores case.  
Deut. 28. 44.  
Cursed is he that  
smite his neigh-  
bour secretly.  
a 22 H. 8. ca. 9.  
Read the statute.  
Dier 93 H. 8.  
fol. 50. a. Sac-  
combes case.  
b Anno 33 H. 8.

Britton fo. 14.

c 13 H. 4. 5 & 6.  
Stanf. pl. cor. 65.  
Mic. 25 & 26 El.  
So retolved in  
Dowties case.  
d 13 R. 2. ca. 2.  
1 H. 4. ca. 14.  
Rot. Parl.  
8 H. 6. nu. 38.

13 R. 2. ca. 2.

Lib. 2. fo. 93.  
Tr. 25 Eliz. in  
Lacies case.  
Fortescue ca. 32.  
fo. 38.

28 H. 8. ca. 13.

2 E. 6. ca. 24.

[ Killing. ] As by Poison, Weapon, Sharp or blunt, Gun, Crossbow, Crushing, Beating, Smothering, Suffocating, Strangling, Drowning, Bur-ning, Hurting, Famine, throwing down, inciting a dog or bear, &c. to bite or hurt, &c. whereof death ensueth, laying a sick man in the cold, &c.

Poison, ( Venenum, a venis, quia a venis permeat ) is, as hath been said, the most detestable of all, because it is most horrible, and fearful to the nature of man, and of all others can be least prevented, either by manhood or providence: and that made Fleta to say, Item nec per patriam se defendere debet quis de veneno dato, sed tantum per corpus suum, eo quod initium facti non fuit tam publicum, quod sciri poterit a patria, &c. But that is not holden for Law at this day.

a This offence was so odious, that by Act of Parliament it was made High Treason, and inflicted a more grievous and lingering death than the Common Law prescribed, viz. That the offender should be boiled to death in hot water: Upon which Statute b Margaret Davy a young woman was attainted of High Treason for poisoning of her Mistress, and some others were boiled to death in Smithfield the 17 day of March in the same year. But this Act was too severe to live long, and therefore was repealed by 1 E. 6. cap. 12. and 1 Mar. cap. 1.

All the ancient Authoys, ubi supra, of old time defined murder to be, Occulta hominis occisio, &c. when it was done in secret, so as the offender was not known: but now it is taken in a larger sense.

Britton mentioneth another kind of murder ( which is not holden for murder at this day ) when he saith: Ceux auxi que fauxment pur lower, ou en autre manner out ascun home damne ou fait damner au mort, &c. yet this is murder before God. And David killed Uriah with his pen, and these men with their tongue.

[ Within any County of the Realm. ] c If two of the Kings Subjects go over into a forraign Realm and fight there, and the one kill the other, this murder being done out of the Realm, cannot be for want of trial heard and determined before the Common Law: d but it may be heard and determined before the Constable and Marshal.

If A. give B. a mortal wound in a forraign Country, B. cometh into England and dieth, this cannot be tried by the Common Law, because the stroke was given there, where no Visne can come, but the same shall be heard and determined before the Constable and Marshal: for the words of the Statute of 13 R. 2. be: To the Constable it pertaineth to have consuance of Contracts, concerning deeds of arms, or of War out of the Realm, and also of things that touch Arms, or War within the Realm, which cannot be determined or discussed by the Common Law.

If a man be stricken upon the high Sea, and dieth of the same stroke upon the Land, this cannot be enquired of by the Common Law, because no Visne can come from the place where the stroke was given, ( though it were within the Sea pertaining to the Realm of England, and within the ligeance of the King ) because it is not within any of the Counties of the Realm. Neither can the Admiral hear and determine this murder, because though the stroke was within his jurisdiction, yet the death was infra corpus comitatus, whereof he cannot inquire: neither is it within the Statute of 28 H. 8. because the murder was not committed on the Sea. But by the said Act of 13 R. 2. the Constable and Marshal may hear and determine the same. And before the making of the Statute of 2 E. 6. If a man had been feloniously stricken, or poisoned in one County, and after had died in another County, no sufficient Indictment could thereof have been taken in either of the said Counties, because by the Law of the Realm, the Jurors of one County could not inquire of that, which was done in another County. It is provided by that Act that the Indictment may be taken, and the Appeal brought in that County, where the death doth happen. Before the making



king of this Statute, the Appeal might have been brought in either of the said Counties, but the trial must have been out of both: but when both Counties could not joyn, then both Appeal and Indictment failed at the Common Law.

But here be Two things to be observed: First, that in case of Treason or misprision thereof, or of Felony or misprision of the same within the Realm, the party ought to be Indicted within the same County where the fact is done, and it cannot be alledged in any other County, then in truth where it was done. And therefore in the case abovesaid neither the stroke, nor poisoning, nor the death, though they be transitory, can be alledged in the Indictment or Appeal, but where in truth they were done. Secondly, the Statute of 2 E. 6. extendeth not where one is stricken or poisoned on the Sea, or in any foreign Kingdom, and dieth in England, but where one is stricken or poisoned in one County, and dieth in another.

This Act extendeth, where the Murder, or Felony is done in one County, and another shall be accessory in another County: whereof you may read at large in the Lord Sanchars case.

Richard Weston being Sir Thomas Overburies Keeper in the Tower of London, did poison him in that part of the Tower which is within London. R. Carl of S. and F. his wife, James Franklin and Anne Turner were accessories before the fact in the County of Midd. and Sir Gervase Helwys Lieutenant of the Tower was accessory before the fact in London. Now upon this Statute of 2 E. 6. ca. 24. divers questions were resolved: First, if the accessory be in Midd. where the Kings Bench sit, and the principal is attainted in another County, the Kings Bench may try the accessory, as it was resolved in the Lord Sanchars case, ubi supra. 2. If the indictment of the accessory be taken in the Kings Bench, the Justices shall not by force of the Statute of 2 E. 6. write in their own names, quia placita sunt coram Rege, & non coram Justiciariis. but remove the Record by the Kings writ of Certiorari. 3. Divers presidents were shewn, that where accessories before the fact were in Midd. where the Kings Bench did sit, &c. and the attainder of the principal had been in another County, the Justices of the Kings Bench have removed the attainder by Writ of Certiorari before them. See the Lord Sanchars case, ubi supra, and another case where the principal was attainted in the County of Oxon, before Justices of Oier and Terminer, and the accessory was in Midd. where the Kings Bench sate. 4. Richard Weston being attainted as principal in the City of London, proceeding was to be had against James Franklin and Anne Turner in the Kings Bench where they were Indicted. The question was, if the Kings Bench should remove the record of the attainder of the principal by Certiorari before them, and after the said Carl and his wife should be tried by their Peers before the Lord Steward, whether the Lord Steward might write to the Kings Bench for the record of the attainder: for the words of E. 6. be, Shall write to the Custos Rotulorum, or Keepers of the Record where such principal shall hereafter be attainted or convict. And to prevent all doubts, a special Writ was directed according to the words of the Act, to the Commissioners of Oier and Terminer, to certify whether the principal was attainted, convicted, or acquitted, and they made a particular certificate accordingly: so as the record of the attainder remained still with the Commissioners of Oier and Terminer in London. 5. It was resolved upon consideration had of the whole Act, that the words of the Act being, the Justices of Goal Delivery, or of Oier and Terminer, or other there authorised, shall proceed, &c. the same extend to the High Steward to write, &c.

The Indictment of Richard Weston was, that he 9 Die Maii Anno 11 Regis Jacobi, &c. gave to Sir Thomas Overbury a poison called Roseacre in broth, which Sir Thomas Overbury not knowing it, received: Et ut idem Ric. Weston præfatum Thomam Overbury magis celeriter interficeret, & murraret, 1 Junii Anno 11 Jac. Regis, gave unto him another poison called white Arsenick. And that Richard Weston 10 Julii, Anno 11 Jac. Regis, gave unto

18 E. 3. 32.  
9 H. 6. 63.  
3 H. 7. 12.  
4 H. 7. 18.  
6 H. 7. 10.

Lib. 9. fo. 117,  
118, &c.

Mich. 13 Jac.  
Regis.  
Sir Thomas Overburies case.  
See hereafter  
ca. 62. of Indictments more of  
this case:



him poison, called Mercury sublimat, in Tarts, &c. ut præd. Thomam magis celeriter interficeret, & murraret. And that a person unknown, by the procurement, and in the presence of Richard Weston, 14 Septemb. 11 supradictio, gave to the said Thomas a Glyster with poison in it, called Mercury sublimat, &c. ut præd. Thomam magis celeriter interficeret & murraret. Et prædict. Thomas Overbury de separalibus venenis prædict. & operatione inde a prædict. separalibus temporibus, &c. graviter languebat usque 15 diem Septemb. Anno 11 supradictio, quo quidem 15 die Septembris, &c. prædictus Thomas de separalibus venenis prædictis obiit venenatus. And this was resolved to be a good Indictment by all the Justices of the Kings Bench, although it doth not appear in particular, of which of the said poisons he died. For the substance of the Indictment was, whether he was poisoned or no, by the said Richard Weston. And upon this Indictment he was arraigned, pleaded not guilty, and had judgment given against him. And afterward Anne Turner, Sir Gervase Helwis Lieutenant of the Tower, and Richard Franklin the Physician, were indicted as accessories before the fact, and arraigned, and pleaded not guilty: and it fell out in evidence, that Franklin had prepared divers other poisons then were contained in the Indictment, as the powder of Diamonds, the powder of Spiders, Lapis Cansticus, and Cantharides, over and besides the poisons in the Indictment. And it was resolved, that any of these was sufficient to prove the Indictment: for the substance of the Indictment was poisoning, which (as hath been said) is secret: *Sæ Machallis case ubi supra.* And after verdict, judgment was given against all these accessories. And after, the said Earl and the Countess his wife were Indicted as accessories before the fact, and were arraigned before the Lord Chancellor of England, and hac vice, Lord High Steward of England: and upon the arraignment of the Countess, she confessed the Indictment: and when the Clerk of the Crown did ask her, What she could say why judgment of death should not be given against her: she said, That she could say much against her self, but nothing for her self. And then the Lord Steward gave judgment of death against her, viz. That she should be hanged by the neck till she were dead: and adjourned his Commission, (as it was resolved he might do by Law) until the next day: and then the said Earl was arraigned, and pleaded not guilty, and put himself upon his Peers, who found him guilty: and thereupon the Lord Steward gave the like judgment against him. Which case we have recited the more largely for two causes. First, for that we remember not any of the Nobility of this Realm to have been attainted in former times for poisoning of any. Secondly, for that it is the first case that fell out upon the said Act of 2 E. 6. in case of trial by Peers of any that was Noble, and the proceeding herein was by great advisement. But now let us return where we left.

¶ Reasonable creature, in rerum natura. ] As man, woman, child, subject born, or Alien, persons outlawed, or otherwise attainted of Treason, Felony, or Premunire, Christian, Jew, Heathen, Turk, or other Infidel, being under the Kings peace.

a Master of a Ship and divers Mariners, &c. were attainted of murder before Justices in Eyre, for drowning of many Jews within the County of Kent.

b If a woman be quick with child, and by a Potion or otherwise killeth it in her womb: or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead-child, this is a great misprision, and no murder: but if the child be born alive, and dieth of the Potion, Battery or other cause, this is murder: for in Law it is accounted a reasonable creature, in rerum natura, when it is born alive. And the c Book in 1 E. 3. was never holden for Law. And 3 Ass. p. 2. is but a repetition of that case. And so horrible an offence should not go unpunished. And so was the Law holden d in Bractons time, Si aliquis qui mulierem prægnantem percusserit, vel ei venenum dederit, per quod fecerit abortivum, si puerperium jam formatum fuerit: & maxime si fuerit animatum, facit homicidium. And herewith agreeth Fleta: and herein the Law is grounded upon the

Law

a Chro. de Dunstable, Holl. 252.  
Coram Justic.  
Itiner. in Com.  
Ranc. 18 E. 1.  
See the second part of the Inst. cap. stat. de Judaismo.  
b 22 E. 3. Coron. 263.  
8 E. 2. Cor. 418.  
Stan. p. Cor. 21. c.  
c 1 E. 3. 23, 24.  
3 Ass. p. 2.  
d Bract. li. 3. f. 21.  
Fleta, lib. ca. 23.



Law of God, which saith, Quicumque effuderit humanum sanguinem, fundetur sanguis illius, ad imaginem quippe Dei creatus est homo. If a man counsel a woman to kill the child within her womb, when it shall be born, and after she is delivered of the child, she killeth it; the counsellor is an accessory to the murder, and yet at the time of the commandment, or counsel, no murder could be committed of the child in utero matris: the reason of which case proveth well the other case.

Genesis c. 6. v. 6.

Dier 3 Eliz. fol. 186.

¶ Malice prepensed. ] First let us see what this malice is.

Malice prepensed is, when one compasseth to kill, wound, or beat another, and doth it sedato animo. This is said in Law to be malice forethought, prepensed, malitia præcogitata. This malice is so odious in Law, as though it be intended against one, it shall be extended towards another. \* Si quis unum percusserit, cum alium percutere vellet, in feloniam tenetur.

Dier 3 Mar. 182.

Pl. Com. 474.

475, 476.

Lib. 9. fol. 81.

Agnes Gores case.

\* Bract. lib. 3.

fol. 155.

Mandata recipiunt strictam interpretationem, sed illicita latam & extensivam. But herein there is a diversity between the principal and the accessary. For if A. command B. to kill C. and B. by mistaking killeth D. instead of C. this is murder in B. because he did the act: and it sprang out of the root of malice, and the Law shall couple the event to the cause: but A. is not accessary, because his commandment was not pursued; and his consent, which must make him accessary, cannot be drawn to it, for he never commanded the death of D. But where death ensueth upon that act which is commanded, though death it self be not commanded, there he is accessary to it, for there the commandment is the cause of death. As if A. command B. to beat C. and he beat him, whereof he dieth: the commander is accessary, and therefore the diversity is apparent, as to the accessary. Where death is pursuant, and followeth upon the act commanded, there the consent of the commander may well be drawn to it, for that the commandment is the mean of the death. But where death ensueth upon another distinct cause, there the consent of the accessary cannot be drawn to it, & sic de cæteris.

Another diversity there is, when the commandment extends expressly to the killing of another, and for the better accomplishment thereof prescribeth a mean: that is, to kill him by poison, and he killeth him with a Gun, he is accessary: for the commandment was to kill, which ensued, though the mean was not followed; & finis rei attendendus est. And the substance of the commandment, viz. [to kill] is pursued: and the same offence that was commanded, is committed. But otherwise it is, if the same offence which is commanded be not committed.

As if one command to rob the Wintners man of Plate, as he is come to a Gentlemans chamber to his supper with wine; and he breaketh the Tabern in the night, and stealeth the plate there; the commander is not accessary to this Burglary, for this is another offence then he commanded, and the consent of the accessary must be drawn to the murder or felony committed.

2. It must be malice continuing until the mortal wound, or the like be given. Albeit there had been malice between two, and after they are pacified and made friends, and after this upon a new occasion fall out, and the one killeth the other: this is Homicide, but no Murder, because the former malice continued not.

If A. command B. to kill C. and before the act be done, A. repenteth and countermand his commandment, and charge B. not to do it: if B. after killeth him, A. is not accessary to it: for the malicious mind of the accessary ought to continue until the act done.

Pl. Com. ubi sup.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch their weapon, and go into the field, and therein fight, the one killeth the other: here is no malice prepensed, for the fetching of the weapon and going into the field, is but a continuance of the sudden falling out, and the blood was never cooled. But if they appoint to fight the next day, that is malice prepensed.

¶ Malice implied, is in three cases. ] First, in respect of the manner



Lib. 9. fo. 67. b.  
in Mackallies case.  
1 E. 6. c. 12.

ner of the dæd. As if one killeth another without any provocation of the part of him that is slain, the Law implieth malice: whercof you may read lib. 9. fol. 67. Mackallies case. Also the poisoning of any man, whercof he dieth within the year, implieth malice, and is adjudged wilful murder or malice prepensed. One may be poisoned Four manner of ways: Gustu, by taste, that is, by eating, or drinking, being infused into his meat or drink: Anhelitu, by taking in of breath, as by a poisonous perfume in a Chamber, or other room: 3. Contactu, by touching: and lastly, Suppositu, as by a Glyster or the like. Now for the better finding out of this horrible offence, there be divers kinds of poisons, as the powder of Diamonds, the powder of Spiders, Lapis causticus, (the chief ingredient whercof is Soap) Cantharides, Mercury sublimate, Arsenick, Mosseacre, &c.

Lib. 9. fo. 68.

2. In respect of the person slain. As if a Magistrate or known Officer, or any other that hath lawful warrant, and in doing, or offering to do his office, or to execute his warrant, is slain, this is murder, by malice implied by Law, as the Sherif, Justice of Peace, Undersherif, chief Constable, petit Constable, or any other minister of the King. If a man kill a watchman doing his office, it is murder: so it is, if any, that come in aid of the Kings Officer, &c. to do his Office, be slain, it is murder.

Mackallies case.  
Ubi supra.  
Lib. 4. fo. 40. b.  
41. a. Youngs  
case.  
Mackallies case.  
Ubi supra.

3. In respect of the person killing. If A. assault B. to rob hfm, and in resisting A. killeth B. this is murder by malice implied, albeit he never saw or knew him before. If a prisoner by the dures of the Goaler cometh to untimely death, this is murder in the Goaler, and the Law implieth malice in respect of the cruelty. And this is the cause, that if a man dieth in prison, the Coroner ought to sit upon his body, to the end it may be inquired of, whether he came to his death by the dures of the Goaler, or otherwise: all which appeareth in Britton: and this sitting of the Coroner continueth till this day.

Brit. cap. 11. De  
prisons fo. 18. a.  
See the Mirror  
cap. 2. §. 11.  
De Homicide.  
5 H. 6. 58.  
27 Ass. 41.

If the Sherif, or other Officer, where he ought to hang the party attainted, according to his judgment and his charge, will against the Law of his own wrong, burn or behead him, or e converso; the Law in this case implieth malice in him. Neither can the King by any warrant under the great Seal alter the execution, otherwise then the judgment of Law doth direct: for it is a Maxime in Law, Non alio modo puniatur quis quam secundum quod se habeat condemnatio.

Bract. l. 3. fo. 104.

And it is to be known, that in case of Treason and Felony, there is an express judgment and an implied judgment: Express, when upon appearance, &c. an express judgment is given against him, quod suspendatur per collum. Implied, when the offender makes default, and is outlawed, where the judgment is Ideo utlagetur; or in case of abjuration, quia abjuravit regnum: and yet the like execution shall be in case of Outlawry or Abjuration, as in case of an express judgment: and so it was adjudged in case of a person outlawed for Felony, he ought to be hanged until he be dead, and cannot be beheaded, \* and the like is in case of abjuration. But in case of High Treason, because beheading is parcel of the judgment, the King may pardon all the residue of the execution except that: for seeing the King may pardon the whole execution, he may pardon any part, or all, saving part. If a Lieutenant, or other that hath commission of Marshal authority, in time of peace hang, or otherwise execute any man by colour of Marshal Law, this is murder, for this is against Magna Charta, cap. 29. and is done by such power and strength, as the party cannot defend himself; and here the Law implieth malice. Vide Pasch. 14 E. 3. in Scaccario the Abbot of Ramseys case in a Writ of Error in part abridged by Fitzh. tit. Scire fac. 122. for time of peace.

See hereafter in  
the title of San-  
ctuary for Abju-  
ration.  
Pasch. 20 R. 2.  
Coram Rege  
Linc. Ro. 58.  
\* Mich. 1 R. 2.  
Coram Rege  
Rot. 1. Bedf.  
See hereafter cap.  
Judgment and  
Execution.  
4 Pasch. 39 E. 3.  
Coram Rege.  
Rot. 92. Wiltes.  
Simile Pasch.  
28 E. 3. Coram  
Rege Rot. 37.  
In case de Mort-  
imer, who was put  
to death Anno  
1 E. 3.  
Vide Rot. Brevi-  
um Anno 1 E. 3.  
part. 1.

\* Thom. Countee de Lancaster being taken in an open insurrection, was by judgment of Marshal Law put to death in Anno 14 E. 4. This was adjudged to be unlawful, eo quod non fuit arrainiatur, seu ad responsonem positus tempore pacis, eo quod Cancellaria & aliæ Curia Regis fuerunt tunc apertæ, in quibus lex fiebat unicuique, prout heri consuevit, quod contra cartam de libertatibus cum dictus Thomas fuit unus Parium & Magnatum Regni non imprisonetur, &c.

Nec



Nec dictus Rex super eum ibit, nec super eum mittet, nisi per legale iudicium Parium suorum, &c. tamen tempore pacis absque arrangemento, seu responsione, seu legali iudicio Parium suorum, &c. adjudicatus est morti.

¶ Within a year and a day.] How this year and a day shall be accounted, is to be seen. If the stroke or poison, &c. be given the first day of January, the year shall end the last day of December: for though the stroke or poison, &c. were given in the Afternoon of the first day of January, yet that shall be accounted a whole day, for regularly the Law maketh no fraction of a day; and the day was added, that there might be a whole year at the least after the stroke, or poison, &c. for if he die after that time, it cannot be discerned, as the Law presumes, whether he died of the stroke or poison, &c. or of a natural death; and in case of life the rule of Law ought to be certain. But seeing the year and day in the case of murder and homicide, must be accounted apres le fait, after the deed, if a man be stricken or poisoned, &c. the first of January, and he dieth of that stroke or poison the first day of May, whether shall the year and day be accounted after the stroke or poison given, or after the death? and it shall be accounted after the death, for then the man was murdered, and not after the stroke or poison given, &c. both in the Indictment at the suit of the King, and in the Appeal at the suit of the party. And so it hath been often adjudged contrary to the opinion of Justice Stanford. A murderer half a year after the murder is received, and aided by another, this Accessory may be Indicted or Appealed within the year after he became accessory, though it be after the year that the murder was committed, and shall be tried when the Principal is attainted.

If a murder be committed in the day time in a Town not inclosed, and the murderer not apprehended, the Township shall be amerced; but if inclosed, whether the murder be in the night or day, the Town shall be amerced. They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned. What judgment a Felon attainted shall have; and what he shall forfeit; See the first part of the Institutes, Sect. 747. and here cap. Judgment and Execution.

\* Nota that before the reign of H. 1. the judgment for Felony was not always one, but King H. 1. ordained by Parliament, that the judgment for all manner of Felonies should be, that the person attainted should be hanged by the neck till he be dead, which continueth to this day. See more for Murder in the chapter of Monomachia.

See the Statute of Gloucester.  
6 E. 1. ca. 9.  
3 H. 7. ca. 1.  
3 E. 3. Cor. 203.  
Lib. 5. fo. 1. in Cleytons case.

Lib. 4. fo. 41, 42.  
in Heydons case.

Stanf. Pl. Cor. 63.  
26 Ass. p. 52.

3 H. 7. c. 1. stat. 1.  
3 E. 3. Cor. 299.  
8 E. 2. Cor. 395.  
Inter leges regis  
Edw. cap. 6.  
Æthelstani, cap. 1.  
Edw. cap. 6. &c.  
\* 9 H. 1.  
Hovenden Anno  
1108. Simon  
Dun.  
Rad. & Floren.  
Wigorn. Hol-  
lenh. 45.



## CAP. VIII.

## Of Homicide.

**H**omicidium ex vi termini comprehendeth Petit Treason, Murder, and that which is commonly called Man-slaughter : for Homicidium est Hominis cædium, and Homicidium est Hominis occisio ab homine facta. Therefore the right division of Homicide is : That of Homicides or Man-slaughters, some be voluntary, and of malice forethought : as Petit Treason, and murder of another, and murder of himself. Of the two former we have spoken ; and of murder of himself we shall speak hereafter. Of man-slaughters, some be voluntary, and not of malice forethought : of these some be Felony (as shall be shewed hereafter) and some be no Felony ; Of which, some be in respect of giving back inevitably in defence of himself, upon an assault of revenge : and some without any giving back, as upon the assault of a Thief or Robber upon a man in his house, or abroad. Some upon the assault of one that is under custody, as the Sheriff, or Gaoler assaulted by his prisoner : Some in respect that he is an Officer or Minister of Justice, without any assault in execution of his Office, or lawful warrant. And lastly, some Homicides, that be no Felony, be neither forethought nor voluntary, as man-slaughter by misadventure, per infortunium, or casu. And some of these, that be no Felony, are causes of forfeiture of a mans goods, and some be not : and of these severall branches in their order. And first of murder of a mans self, who commonly is called Felo de se.

3 E. 3. Cor. 290.  
289. 312.  
Britton cap. 7.

Felo de se;

Felo de se is a man or woman, which being Compos mentis, of sound memory, and of the age of discretion killeth himself, which being lawfully found by the oath of twelve men, all the goods and chattels of the party so offending are forfeited.

Regula.

Now let us peruse the severall branches of this description, Majus est delictum seipsum occidere, quam alium.

a Ror. Claus.  
1 E. 1. m. 7.  
Ror. Claus.  
6 E. 1. Alma filia  
Roberti de Keston.  
3 E. 3. Cor. 324.  
Ror. Escheat.  
Anno 47 E. 3.  
nu. 17. Ricus  
Algate.  
b 8 E. 2. Cor. 412.  
22 E. 3. Cor. 244.  
Pl. Com. 260.

**[ Being compos mentis. ]** a If a man lose his memory by the rage of sickness or infirmity, or otherwise, and kill himself while he is not compos mentis, he is not Felo de se: for, as he cannot commit murder upon another, so in that case he cannot commit murder upon himself. b If one during the time that he is non compos mentis giveth himself a mortal wound, whereof he, when he hath recovered his memory, dieth, he is not Felo de se: because, the stroke which was the cause of his death, was given when he was not compos mentis: Et actus non facit reum, nisi mens sit rea. If a man give himself a wound, intending to be Felo de se, and dieth not within the year and day after the wound, he is not Felo de se.

**[ Of the age of discretion. ]** Hereof we have spoken before treating of murder.

c 44 E. 3. 44.  
3 E. 3. Cor. 286.  
8c 297.

**[ Kill himself. ]** c And this is often voluntary, and sometime not voluntary. If A. give B. such a stroke, as he selleth him to the ground, B. draweth his knife, and holds it up for his own defence : A. in hast meaning to fall upon B. to kill him, falleth upon the knife of B. whereby he is wounded to death, he is Felo de se: for B. did nothing but that which was lawful in his own defence.

d Pl. Com. 360. b.

**[ Lawfully found. ]** d No goods be forfeited, until it be lawfully found by the Oath of twelve men, that he is Felo de se: and this doth belong to the Coroner



Coroner super visum corporis, to inquire thereof: and if it be found before the Coroner super visum corporis, that he was felo de se, <sup>a</sup> the Executors or Administrators of the dead shall have no traverse thereunto. And this is the reason, that no man can prescribe to have Felons goods, because they are not forfeited, until it be found of Record, that he is Felo de se.

<sup>b</sup> If a man be Felo de se, and is cast into the sea, or otherwise so secretly hidden, as the Coroner cannot have the view of the body, and by consequence cannot inquire thereof: In this case it may be inquired thereof by the Justices of Peace of that County; for they have power by their Commission to inquire of all Felonies. But if it be found before them, the Executors or Administrators of the dead may have a traverse thereunto, but not to the indictment taken before the Coroner super visum corporis, as before is said: And so it hath been resolved. And so in the case abovesaid may the Kings Bench enquire thereof, if the Felony be committed in the County where the Kings Bench sit, and the Executors or Administrators of the dead may traverse the same.

¶ Are forfeited. ] Albeit <sup>c</sup> Bracton was of opinion: that if a man that was reus alicujus criminis captus sit pro eodem, utpote pro morte hominis, vel cum furto manifesto, vel quod utlegatus sit, & metu poenæ imminentis mortis mortem sibi consciverit, hæredem non habebit, quia sic vincitur felonia prius facta, viz. furtum, mors hominis, vel hujusmodi, & conscientia metus in reo pro confesso habetur. Aliud erit si non sit in crimine deprehensus, &c. non debet in aliquo casu exheredatio fieri, nisi præcedat crimen, propter quod periculum mortis vel membrorum sustineri debet, &c. But the Law makes no such diversity: <sup>d</sup> for Felo de se, whatsoever offence he hath committed (whereof he was not in his life time attainted) shall forfeit no lands, but his goods and chattels only. <sup>e</sup> And so saith Britton, En case ou home est felon de soy meisme, soient ses chateaux judges nous come chateaux de felon, le heritage nequident remoine as heires. For no man can forfeit his Land without an attainder by course of Law.

A <sup>f</sup> Villain giveth himself a mortal wound, the Lord seisseth his goods, the Villain after dieth of the wound within the year and the day, the goods are forfeit.

And herein <sup>g</sup> there is a diversity between Chattels personels in action, and in possession: for if a debt be owing to two, unless it be in case of two joynt Merchants, and the one is Felo de se, he doth forfeit the whole: but otherwise it is of goods in possession, for there he forfeiteth but his part.

A <sup>h</sup> Lease is made for years to the husband and wife, the husband drowneth himself, the Lease is forfeited, as you may read at large in Plowdens Commentaries.

Now let us peruse the branches into which bloody Homicide did spend and empty it self.

¶ Some Manslaughters be voluntary, and not of malice forethought, upon some sudden falling out. Delinquens per iram provocatus puniri debet mitius. And this for distinction sake is called Manslaughter. There is no difference between Murder and Manslaughter, but that the one is upon malice forethought, and the other upon a sudden occasion: and therefore is called Chance-medly. As if two meet together, and striving for the wall the one kill the other, this is Manslaughter and Felony. And so it is, if they had upon that sudden occasion gone into the fields and fought, and the one had killed the other: this (as hath been said) had been but Manslaughter, and no murder; because all that followed, was but a continuance of the first sudden occasion, and the heat of blood kindled by ire was never cooled, till the blow was given, & sic de similibus.

Manslaughter <sup>i</sup> is Felony, and hereof there may be accessories after the fact done: but of Murder, there may be accessories as well before as after the fact.

¶ Some be <sup>k</sup> voluntary, and yet being done upon an inevitable cause, are no felony. As if A. be assaulted by B. and they fight together, and before any mortal blow given, A. giveth back, until he cometh unto a hedge, wall, or other strait,

I

beyond

<sup>a</sup> Stanf. pl. cor. 183. d.

<sup>b</sup> Hil. 37. Eliz. in the Kings Bench by the whole Court in the case of one Loughton of Cheshire. See 8 E. 2. cor. 412. 3 E. 3. cor. 312. fi. c. Stanf. pl. cor. 184.

<sup>c</sup> 8 E. 2. cor. 426. 44 E. 3. 44. 22 E. 3. cor. 259. 3 E. 3. cor. 301. 3 E. 3. cor. 362. 5 Mar. Dier. 160. 9 Eliz. Dier. 262. Bra. lib. 3. f. 150. Fleta lib. 2. c. 34. d Pl. com. 261. a. & b. per courts les Justices. <sup>e</sup> Britton, cap. 7. Custom de Norm. cap. 21.

<sup>f</sup> Pl. Com. 260. b.

<sup>g</sup> 8 E. 4. 4. Pl. com. 259. b.

<sup>h</sup> Pl. com. 260. Dier 2 Mar. 108.

<sup>i</sup> Lib. 4. fol. 44. Bibithes case. <sup>k</sup> 15 E. 3. Cor. 116. 15 Aff. p. 7. 43 Aff. 31. See the stat. of Gloc. cap. 29. 3 E. 3. cor. 184. 286. & 297. 305. & 361. See hereafter ca. 101. of Judgment and execution. Verb. Of death of a man se defendendo.



o 43 Aff. 31. Rot.  
Parl.  
3 R. 2. nu. 18.  
John Imperia's  
case.  
b 21 E. 3. 17.  
Gloc. cap. 9.  
4 H. 7. 2.  
c Lib. 4. fo. 44.  
Eibiths case.

Bracton.  
d Lib. 5. fo. 91.  
Semayns case.  
26 Aff. p. 23. 3.  
29 Aff. p. 23.  
3 E. 3. cor. 305. &  
330.  
22 E. 3. cor. 261.  
21 H. 7. 39.  
e 24 H. 1. cap. 5.  
f 22 Aff. p. 55.  
g 3 E. 3. cor. 290.  
22 E. 3. cor. 201.  
M. 22. E. 3. coram  
rege Rot. 181.  
Eborum,  
Rot. liberr. Anno  
1 & 2 E. 1. m. 2.  
h Pasch. 16. E. 3.  
Coram rege.  
Rot. 131. Norff.

i 11 H. 7. 22.  
Vid. hereafter  
cap. against riding  
and going armed.  
k Mirror cap. 1.  
§. 13. Des adven-  
tures.  
l Bract. lib. 3.  
fo. 136. b.  
See the stat. of  
Gloc. ca. 9. Marl.  
cap. 25.  
Bract. lib. 3. 120.  
Brit. ca. 7. fo. 15.  
Fleta lib. 1. ca. 30.  
Mir. cap. 1. §. 9.  
m Bract. lib. 3. 120.  
n Sed erit distin-  
guendum utrum  
quis dederit ope-  
ram rei licite vel  
illicite, &c.

o 2 E. 3. cor. 354.  
2 H. 4. 18.  
11 H. 7. 23. a.

beyond which he cannot pass, and then in his own defence, and for safeguard of his own life killeth the other: this is voluntary, and yet no Felony, and the Jury that find it was done se defendendo, ought to find the special matter. *a* And yet such a precious regard the Law hath of the life of man, though the cause was inevitable, *b* that at the common Law he should have suffered death: and though the Statute of Gloucester save his life, yet he shall forfeit all his goods and chattels. *c* Hereof there can be no accessories, either before or after the fact, because it is not done felleo animo, but upon inevitable necessity se defendendo. If A. assault B. so fiercely and violently, and in such a place, and in such manner, as if B. should give back, he should be in danger of his life, he may in this case defend himself; and if in that defence he killeth A. it is se defendendo, because it is not done felleo animo: for the rule is, when he doth it in his own defence, upon any inevitable cause, Quod quis ob tutelam corporis sui fecerit, jure id fecisse videtur.

*C* Some without any giving back to a wall, &c. or other inevitable cause. *d* As if a thief offer to rob or murder B. either abroad, or in his house, and thereupon assault him, and B. defend himself without any giving back, and in his defence killeth the thief, this is no Felony, for a man shall never give way to a thief, &c. neither shall he forfeit any thing. *e* And so it is declared by the Statute of 24 H. 8. Likewise *f* if a prisoner assault the Goaler, the Goaler is not by Law enforced to give back: but if in defence of himself he kill the prisoner, this is no Felony.

*g* So if any Officer or Minister of Justice, that hath lawful warrant, and the party assault the Officer or Minister of Justice, he is not bound by Law to give back, but to carry him away: and if in execution of his Office he cannot otherwise avoid it, but in striving kill him, it is no Felony. And in that case the Officer or Minister of Justice shall forfeit nothing, but the party so assaulting or offering to fly away, and is killed, shall forfeit his goods and chattels.

*h* Vicecomes seu ballivus Domini Regis, qui interficit duos latrones non permittentes se iusticiarii in sui defensionem, & non ex feloniam, seu malitia, acquietatur.

*i* If at a Just or Turnement, or at the play with Sword and Buckler by the Kings commandment, one doth kill another, this is no Felony. *k* In the reign of King H. 2. it was enacted, that if in such case one was slain, it should be no Felony, for that in friendly manner they contended to try their strength, and to be able to do the King service in that kind, as occasion should be offered.

*C* There is an Homicide that is neither forethought nor voluntary. *l* As if a man kill another per infortunium, seu casu, that is Homicide by misadventure. De amputatore arborum, qui cum ramum projiceret, inscius occidit transeuntem: aut cum quis pilam percusserit, &c. ex cuius ictu occisus est, tales de homicidio non tenentur. Homicide by misadventure, is when a man doth an act, that is not unlawful, which without any evil intent tendeth to a mans death.

*C* Unlawful. *m* If the act be unlawful, it is murder. As if A. meaning to steal a Deer in the Park of B. shooteth at the Deer, and by the glance of the arrow killeth a Boy that is hidden in a bush: this is murder, for that the act was unlawful, although A. had no intent to hurt the Boy, nor knew not of him. But if B. the owner of the Park had shot at his own Deer, and without any ill intent had killed the Boy by the glance of his arrow, this had been Homicide by misadventure, and no Felony.

*n* So if one shoot at any wild fowl upon a tree, and the Arrow killeth any reasonable creature afar off, without any evil intent in him, this is per infortunium: for it was not unlawful to shoot at the wild fowl: but if he had shot at a Cock or Hen, or any tame fowl of another mans, and the Arrow by mischance had killed a man, this had been murder, for the act was unlawful.

*C* Without



[ Without any evil intent. ] If a man knowing that many people come in the street from a Sermon, throw a stone over a wall, intending only to fear them, or to give them a light hurt, and thereupon one is killed, this is murder; for he had an ill intent, though that intent extended not to death, and though he knew not the party slain. For the killing of any by misadventure, or by chance, albeit it be not Felony, *Quia voluntas in delictis, non exitus spectatur*; yet he shall forfeit therefore all his Goods and Chattels, to the intent that men should be so wary to direct their actions, as they tend not to the effusion of mans blood.

*Nec veniam effuso sanguine casus habet.*

Nota, Homicide is called Chancemedley, or Chancemelle, for that it is done by chance (without premeditation) upon a sudden brawle, shuffling, or contention: for meddle or melle (as some say) is an ancient French word, and signifieth brawle, or contention. But I take it that the French word is melle, which signifying shuffling or contending, and by corruption we changing the S. to D. do call it medle, the S. being not pronounced, whereof we have made medletum. So as killing of a man by chance-medle, is killing of a man upon a sudden brawle or contention by chance. For the word [medle or melle] whereof we have made a Latin word medletum or melletum, see Glanvill, lib. 1. cap. 2. *Cognoscere de medletis, de verberibus, de plagis*: that is, of brawling, or brawling, of battery, of wounding: the first in words, the other two in strokes, &c. in ancient time expressed by these two Saxon words, viz. Flit, a Flitan, to brawle; & Fiht, which we retain still to fight when it proceeds to blows. Unde Flitwit, Flichtwite, Fightwite, &c.

And thus much of Homicide committed by man. See in the next Chapter of Deodands, of another kind of killing of a man.

## CAP. IX.

### Of Deodands.

**D**eodands when any *a* moveable thing inanimate, or *b* beast animate, do move to, or cause the untimely death of any reasonable creature by mischance *c* in any County of the Realm (and not upon the Sea, or upon any salt water) without the will, offence, or fault of himself, or of any person. *d* They being so found by lawful inquisition of twelve men, being *precium sanguinis*, the price of blood, are forfeited to God, that is to the King, Gods Lieutenant on earth, to be distributed in works of charity for the appeasing of Gods wrath.

And it is to be observed, that there is a diversity, as concerning the Deodand, when the party slain is within the age of discretion, viz. of 14 years, and when he is above the age of discretion. For when he is slain by fall from a cart, horse, mill, &c. and is within the age of discretion, there is no Deodand, as it is adjudged *e* in 8 E. 2. tit. Coron. 389. But otherwise it is if an ore, horse, bull, or the like, do kill any within the age of discretion, there the same are Deodands.

And this Law concerning Deodands, is grounded upon the Law of God, Exod. 2. vers. 28. *Si bos cornu percusserit virum, aut mulierem, & mortui fuerint, lapidibus obruetur*. See Justice Stanford lib. 1. cap. 12. which need not here to be recited. If A. killeth a man with the sword of B. the sword shall be forfeit to 61. a. *Quæ movent ad mortem sunt Deo danda*. 2 Mar. ibid. 107. b. Kelway 21 H. 7. fo. 8. *d* Lib. 5. fo. 110. Foxleys case accord. And this is the reason they cannot be claimed by prescription. 45 E. 3. ubi supra. Fleta ubi sup. *e* 8 E. 2. Cor. 389. f Exod. 2. 28.

*a* 8 E. 1. Cor. 403.  
8 E. 2. Ibid. 189.  
A mill wheel.  
Fleta lib. 1. ca. 25.  
*quicquid mobile sit in molendino*.  
Mirror c. 1. §. 13.  
12 R. 2. Cor. 20.  
a masse of earth in a mine.  
*b* Brañ lib. 3. fo. 120. b àbove, cane, &c.  
*c* Brañ lib. 3. fo. 112. a.  
Britton fo. 6. 15.  
Mirror cap. 1. §. 3.  
Fleta li. 1. ca. 25.  
45 E. 3. 2. b.  
Vide 4 E. 1. Stat. officium coron.  
6 E. 6. Dier 77. b.



Doft. & Stud.  
lib. 2. 156. b.  
Br. Forfeit. 112.

All our ancient  
Authors ubi supra.

Rot. Parl. 51 E. 3.  
nu. 73.

\* The arm of the  
sea is included  
herein:

the King as a Deodand, because movet ad mortem; and for default of safe keeping of the same by the owner.

But now that we have cited, and referred you to our Books of Law already known and published: let us cast our eye upon some Records of Parliament concerning Deodands, of, or out of ships or other vessels upon Rivers, or Waters, fresh or salt, the Law being clear, that in aqua dulci there may be Deodands, but in the sea, or in aqua salia, being any arm of the sea, though it be in the body of the County, there can be no Deodand of the ship, or any part thereof, though any be drowned out of it: because, though the arm of the sea be within the body of the County, the ship or other vessel is subject to such dangers upon the raging waves in respect of the wind and tempest. And this diversity doth notably appear in the Parliament Roll. Amongst the petitions in Parliament it is desired, that if it happen any man, or boy to be drowned by a fall out of any ship, boat, or vessel, they shall be no Deodands. Whereunto the King upon great advice and conference with his Judges and Council learned (as always the King doth to Petitions in Parliament) made answer, The ship, boat, or vessel being upon \* the sea, shall be adjudged no Deodand, but being upon a fresh river, it is a Deodand, but the King will shew favour.

See the like petitions in other Rolls of Parliament, Anno 1 R. 2. nu. 106. 4 R. 2: nu. 33. 1 H. 5. nu. 35. &c. but never obtained more than the Common Law gave in these cases.

## CAP. X.

### Of Buggery, or Sodomy.

25 H. 8. ca. 6.  
5 Eliz. ca. 17.  
1 Mar. ubi sup.

Horrendum illud  
peccatum.  
5 El. ca. 17.

Rot. Parl. 50 E. 3.  
nu. 58.

Britton ca. 9.  
Gen. 19. 9.  
Rom. ca. 1. 17.  
F. N. B. 269. a.  
Fleta li. 6. ca. 35.  
Mirror ca. 4. §. de  
Majesty ca. 1.  
§. 15. & cap. 2.  
Sec. 11.

**I**F any person shall commit Buggery with mankind or beast; by authority of Parliament, this offence is adjudged Felony without benefit of Clergy. But it is to be known, (that I may observe it once for all) that the Statute of 25 H. 8. was repealed by the Statute of 1 Mar. whereby all offences made Felony or Premunire by an Act of Parliament made since 1 H. 8. were generally repealed, but 25 H. 8. is revived by 5 Eliz.

Buggery is a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the Ordinance of the Creator, and order of nature, by mankind with mankind, or with brute beast, or by woman-kind with brute beast.

Bugeria is an Italian word, and signifies so much as is before described, Pederastes or Paderestes is a Greek word, Amator puerorum, which is but a Species of Buggery, and it was complained of in Parliament, that the Lombards had brought into the Realm the shameful sin of Sodomy, that is not to be named, as there it is said. Our ancient Authors do conclude, that it deserveth death, ultimum supplicium, though they differ in the manner of the punishment. Britton saith, that Sodomites and Miscreants shall be burnt: and so were the Sodomites by Almighty God. Fleta saith, Pecorantes & Sodomitæ in terra vivi confodiantur: and therewith agreeth the Mirror, pur le grand abomination, and in another place he saith, Sodomie est crime de Majestie, vers le Roy celestre. But (to say it once for all) the judgment in all cases of Felony is, that the person attainted be hanged by the neck until he or she be dead. But in ancient times in that case, the man was hanged, and the woman was drowned, whereof we have seen examples in the reign of R. 1. And this is the meaning of ancient Franchises granted de Furca & Fossa, of the Gallows and the Pit, for the hanging upon the one, and drowning in the other; but Fossa is taken away, and Furca remains.

Cum



Cum masculo non commiscearis coitu foemineo, quia abominatio est. Cum omni pecore non coibis, nec maculaberis cum eo: Mulier non succumbet jumento, nec miscebitur ei, quia scelus est, &c. Levit. 18. 22, 23.  
1 Tim. 1. 10.

The Act of 25 H. 8. hath adjudged it Felony, and therefore the judgment for Felony doth now belong to this offence, viz. to be hanged by the neck till he be dead. He that readeth the Preamble of this Act, shall find how necessary the reading of our ancient Authoys is: The Statute doth take away the benefit of Clergy from the Delinquent. But now let us peruse the words of the said description of Buggery.

[ Detestable and abominable. ] These just attributes are found in the Act of 25 H. 8.

[ Amongst Christians not to be named. ] These words are in the usual Indictment of this offence, and are in effect in the Parliament Roll of 50 E. 3. Ubi supra. nu. 58.

[ By carnal knowledge, &c. ] The words of the Indictment be, Contra ordinationem Creatoris, & naturæ ordinem, rem habuit veneream, dictumque puerum carnaliter \* cognovit, &c. So as there must be penetratio, that is, res in re, either with mankind or with beast, but the least penetration maketh it carnal knowledge. *a* See the Indictment of Stafford, which was drawn by great advice, for committing Buggery with a boy; for which he was attainted, and hanged.

*b* The Sodomites came to this abomination by four means, viz. by pride, excess of Diet, idleness, and contempt of the poor. Otiosus nihil cogitat, nisi de ventre & venere. Both the agent and consentient are Felons: and this is consonant to the Law of God. *c* Qui dormierit cum masculo coitu foemineo, uterque operatus est nefas, & morte moriatur. And this accordeth with the ancient Rule of Law, Agentes & consentientes pari poena plectentur.

Emissio seminis maketh it not Buggery, but is an evidence in case of Buggery of penetration: and so in Rape the words be also carnaliter cognovit, and therefore there must be penetration; and emissio seminis without penetration maketh no Rape. Vide in the Chapter of Rape. If the party buggered be within the age of discretion, it is no Felony in him, but in the agent only. When any offence is Felony either by the Common Law, or by Statute, all Accessories both before and after, are incidently included. *d* So if any be present, abetting and aiding any to do the act, though the offence be personal, and to be done by one only, as to commit Rape, not only he that doth the act is a principal, *e* but also they that be present, abetting, and aiding the misdoer, are principals also, which is a proof of the other case of Sodomy.

[ Or by woman. ] This is within the Purview of this Act of 25 H. 8. For the words be, if any person, &c. which extend as well to a woman as to a man, and therefore if she commit Buggery with a Beast, she is a person that commits Buggery with a Beast, to which end this word [person] was used. And the rather, for that somewhat before the making of this Act, a great Lady had committed Buggery with a Baboon, and conceived by it, &c.

There be four sins in holy Scripture called Clamantia peccata, crying sins, whereof this detestable sin is one, expressed in this Distichon.

Sunt vox clamorum, vox sanguinis, & Sodomorum,  
Vox oppressorum, merces detenta laborum.

\* This is grounded upon the Word of God. viz. Gen. 19. 4, 5. Judges 19. 22. Ut cognoscamus eos.

*a* Coke lib. Intr. 352. Mich. 5.

*1a.* Coram rege.

*b* Ezek. 16. 49.

Gen. 18. 29.

Deut. 29. 23.

Esay 13. 19.

Jer. 23. 14. 49. 18.

50. 4.

Luke 17. 28, 29.

2 Pet. 2. 6.

Jud. vers. 7.

Rom. 1. 26, 27.

Sapient. 10. 6, 7.

*c* Levit. 20. 13.

1 Cor. c. 6. v. 10.

*d* 3 & 4 P. & Mar.

Justice Dalisons

Reports.

Stanf. Pl. Cor.

Pl. com. 97.

*e* 11 H. 4. 13.

See the 2 part of the Institutes in the exposition upon the Statute of W. 1. cap. 13. and W. 2. ca. 34.



## CAP. XI.

## Of Rape.

Deur. 22. 25.  
Inter leges Alve.  
redi cap. 25.  
Caum. 49. 50.  
See W. 2. c. 34.  
W. 1. ca. 13.  
Rot. Parl. 8 E. 2.  
& Rot. Claus.  
8 E. 2. m. 3. Quia  
in casu quando  
aliquis, &c.  
6 R. 2. ca. 6.  
18 Eliz. cap. 6.  
Lib. 11. fol. 39.  
Alexander Poul-  
ters case.  
See the 1 part of  
the Institutes.  
Sect. 190.  
Mich. 19 E. 3.  
Coram rege Rot.  
159. London quod  
ipsam de puella  
gio suo felonice &  
totaliter defloravit  
7 H. 6. 2.  
22 E. 4. 22.  
6 H. 7. 4. b.  
a Di. 14 El. f. 304.  
b 18 El. ca. 6.  
c See before in the  
next preceding  
chapter of Eug-  
gery.  
d Rot. Parl.  
15 H. 6. nu. 14.  
e In the same Roll  
nu. 15.  
f Rot. Parl.  
18 H. 6. nu. 28.  
g Rot. Parl.  
31 H. 6. nu. 72.  
h 31 H. 6. ca. 9.

**R**Ape is Felony by the Common Law, declared by Parliament for the un-  
lawful and carnal knowledge and abuse of any woman above the age of  
ten years against her will, or of a woman child under the age of ten years  
with her will, or against her will, and the offender shall not have the benefit of  
Clergy.

What offence this was at the Common Law, and what Acts of Parliament  
have been enacted concerning the same; See in the second part of the Institutes  
in the exposition upon the Statute of W. 1. ca. 13. and W. 2. ca. 34. and the first  
part of the Institutes, §. 190. 7 H. 6. 2. 22 E. 4. 22. 6 H. 7. 4. b.

a The doubt that was made in 14 Eliz. at what age a woman child might be  
ravished, was the cause of the making of the b Act of 18 Eliz. ca. 6. for plain de-  
claration of the Law. That if any person should unlawfully know and abuse any  
woman-child under the age of ten years, every such unlawful and carnal know-  
ledge should be Felony, and the offender therein being duly convicted, shall suffer  
as a Felon without allowance of Clergy.]

c Although there be emissio feminis, yet if there be no penetration, that is res in-  
re, it is no Rape, for the words of the Indictment be, carnaliter cognovit, &c.

d In the Parliament Rolls we read what detestation hath been had of this  
hainous offence. At the petition of Isabel late the wife of John Botiler of Beau-  
sle in the County of Lancaster Knight, which Isabel one William Pull of Wirrall  
in the County of Chester Gent. shamefully did ravish. It is enacted by Autho-  
rity of Parliament, that if William Pull do not yield himself after Proclama-  
tion made against him, that he shall be taken as a Traitor attainted. e The same  
Isabel by another petition shewed, how the said William by duress and menace of  
imprisonment enforced her to marry him, and by colour thereof ravished her, for  
the which she prayeth her Appeal, which to her is granted.

f Margaret late the wife of Sir Thomas Malesaut Knight, made the like com-  
plaint against one Lewis Leyson, alias Gethy a Welchman. Against whom the  
like order is taken, as was for the said Isabel: only where the Rape was com-  
mitted in Wales, it is enacted, that the same shall be tried in Somersetshire.

g Upon complaint of Henry Beaumont Son and Heir of Sir Henry Beaumont  
Knight, and Charles Vowell Esquire, &c. against one Edward Lancaster of  
Skipton in Craven Esquire, for taking away Dame Joan Beaumont the late  
wife of the said Sir Henry, being lawfully married to the said Charles, and for  
that the said Edward married the said Dame Joan against her will, and ravi-  
shed her. Against Edward Lancaster and others, remedy is given by appeal, and  
further h upon occasions happening thereupon, the Statute of 31 H. 6. was made,  
which giveth remedy to a woman enforced to be bound by Statute or Obligation,  
as by the Act it appeareth.

It is read in story, that chaste Lucretia being ravished, she was found in ex-  
tream heaviness, and it was demanded of her, Salva? she answered, Quomodo  
mulier salva esse potest laesa pudicitia? And yet thereof it is truly said, duo fue-  
runt, & unus commisit adulterium.

In the holy History you shall read, Dinam cum vidisset Sichem filius Hemor  
Hevei princeps terræ illius, adamavit & rapuit, &c. Observe well what followed  
thereupon. Likewise Amnon prævalens viribus suis oppressit Thamar sororem  
suam, & cubavit cum ea, &c. quæ aspergens cinerem capiti suo, scissa talari tunica,  
impositis manibus super caput suum ibat ingrediens & clamans, &c. And observe  
also the end of the offender.



## CAP. XII.

## Felony for carrying away a Woman against her will, &amp;c.

**W**E have thought good next after Buggery and Rape, to speak of the stealing of women, because the \* Apostle doth rank, after the Sodomite, him that is Plagiarius, so called, because lege Flavia plagis damnaretur. And we will begin with the Statute of 3 H. 7. cap. 2.

Where Women, as well Maidens as Widows and Wives, having substances, some in Goods moveable, and some in Lands and Tenements, and some Heirs apparant unto their Ancestors, for the lucre of such substances, been oftentimes taken by misdoers, contrary to their will, and after married to such misdoers, or to other by their assent, or defoyled, to the great displeasure of God, and contrary to the Kings Laws, and disparagement of the said women, and utter heaviness, and discomfort of their Friends, and to the evil example of all other: It is therefore ordained, established, and enacted by our Sovereign Lord the King, by the advice of the Lords Spiritual and Temporal, and the Commons in the said Parliament assembled, and by authority of the same: That what person or persons from henceforth that taketh any Woman so against her will unlawfully, that is to say, Maid, Widow, or Wife, that such taking, procuring, and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, be Felony. And that such misdoers, takers, and procurators to the same, and receytors, knowing the said offence in form aforesaid, be henceforth reputed and judged as principal Felons. Provided alway that this Act extend not to any person taking any Woman, only claiming her as his Ward or Bondwoman.

This Act on the offenders part doth extend to all degrees, and to all persons, but extendeth not to all women: For on the womans part Four things are necessarily required to make the offence Felony. First, That the Maid, Wife, or Widow, have Lands or Tenements, or moveable Goods, or be an heir apparant. Secondly, That she be taken away against her will. Thirdly, That she be married to the misdoer, or to some other by his consent, or be defiled (that is, carnally known.) For if these concur not, the misdoer is no Felon within this Statute, but otherwise to be punished. And so it was resolved, 3 & 4 Ph. & Mar. And after resolved by all the Judges of England upon advised consideration of this Act of 3 H. 7. and upon consultation and conference between them, as the Lord Dier hath reported under his own hand, which I have seen, but the report thereof is omitted in the Print, and the Indictments grounded upon this Statute, are according to this resolution. Fourthly, That she be not Ward or Bondwoman to the person that taketh her: or cause her to be taken only as his Ward or Bondwoman.

By this Act, not only the takers, but the procurers, abettors of the Felony, and receivers of the said Woman wittingly, knowing the same, be all adjudged as principal Felons: the like whereof we find not in any other Statute that we remember. But by a construction of the Common Law, they that receive the mis-

Exod. 21. 16.

Deut. 24. 7.

\* 1 Tim. 1. 10.

3 H. 7. ca. 2.

39 El. ca. 9.

3 & 4 Ph. & Mar.  
Justice Dalisons  
report.

Mich. 25 Eliz.

Dier Manuscrip.

And so resolved

by Parliament in

Anno 39 El. cap. 9.

Nota, quia raro.

doers



doers, and not the woman, are accessories; for this Act maketh the receivers of the woman, &c. principals.

39 Eliz. cap. 2.  
Kelway 81. b.  
Stanf. Pl. cor.

37. b.  
4 & 5 Ph. & Mar.  
cap. 8.  
Hil. 34 Eliz. lib 3.  
fo. 37. Ratcliffes  
case.

For the odiousness of this offence, the benefit of Clergy is taken away from all the offenders against the said Act, Vid. Kelway & Stanford.

See a good and profitable Statute made for such as take away Maidens, or women children, &c. within the age of sixteen years (though it be not against their will) without consent of parents, &c. and a penalty imposed for despoiling or contracting matrimony with such maids or women children; and further, the forfeiture which such maid or woman child undergo, which consent to such contract, &c. But because we are now to speak of Felonies, whereunto that Act extends not, we refer the Reader to the Statute it self. Only we will add a case which we find in the Parliament Roll.

Rot. Parl. 2 R. 2.  
nu. 34.

The Lady Nevil of Essex complained in Parliament, that John Brewse and others brake her house at London, and violently took thereout Margery the Daughter of John Nierford her Son (by her first Husband) and carryed the said Margery away to the house of Sir Robert Howard Knight; and they kept away the said Margery, to the end she should not pursue in Court Christian, for the annullation of a contract of matrimony, against the said John Brewse. This was holden so great an offence, as the said Sir Robert was committed by the Lords to the Tower of London, and he after found surety, and he promised to do his uttermost to bring forth the said Margery by a day prefixed, or else to yield himself prisoner to the Tower again: but it seems the maid was restored to her mother again, &c. for I find no further prosecution of that cause. See hereafter, cap. 45. in fine 43 Eliz. cap. 13.

## C A P. XIII.

### Of Felony for cutting out of Tongues, and putting out of Eyes, &c.

5 H. 4. ca. 5.

**I**F any man do cut out the Tongue, or put out the Eyes of any of the Kings-Lieges, of malice prepensed, it is Felony. The mischief befoze this Statute was, that when one had been beaten, wounded, maimed or robbed, &c. the misdoers, to the end that the party grieved might not be able to accuse them, did cut out their tongues, or put out their eyes, pretending the same to be no Felony: and therefore it is ordained and established to be Felony by this Act.

Here it is to be observed, that where it doth appear by the preamble of this Law, that this offence had been befoze this Act daily done: this Law did so terrifie offenders, as we remember not that we have read in any Book or Record, any to be indicted, &c. upon this Law, above one at the most. And of all Statutes these are to be preferred, which prevent offences befoze they be done, befoze those which punish them after they be done. And therefore in the making of this Law there was Salutaris severitas, & beata securitas.

[Malice prepensed.] That is, voluntary and of set purpose, though it be done upon a sudden occasion: for if it be voluntary, the Law implieth malice.

Bract. lib. 3.  
fo. 144. b.

We read in Bracton, that the cutting off of a mans privy members was Felony by the common Law: for he saith, Quid dicitur si quis alterius virilia absciderit, & illum libidinis causa vel convitii castraverit? tenetur sive hoc volens fecerit vel invitus, & sequitur poena aliquando capitalis, aliquando perpetuum exilium cum omni bonorum ademptione. And agreeable therunto I find a Record in Bractons time to this effect: Henricus Hall & A. uxor ejus capti & detenti sunt in prisona de Evilchester, eo quod reſtati fuerunt quod ipsi absciderunt virilia

Rot. Claus. Anno  
13 H. 3. m. 9.



virilia Johannis Monachi, quem idem Henricus deprehendit cum prædicta A. uxore ejus, &c. Fleta saith, Si quis castratus fuerit, talis pro mahematio poterit adjudicari. And therewith agreeth old Justice Sennall in the Mirror; and so is the Law holden at this day. And in the Appeal and Indictment of Mayhem it is said Felonice Mayhemavit; whereof we shall speak more hereafter in his proper place. Cutting off of Ears is no Felony, as it appeareth by the Statute of 37 H. 8. Vid. Stanf. Pl. Cor. 27. a. The offender shall have the benefit of his Clergy.

Fleta lib. 1. ca. 38  
Mir. ca. 1. §. 9.  
De homicidio.  
See hereafter ca.  
53. of Mayhem.  
37 H. 8. cap. 6.  
Mir. cap. 4. de Ar-  
tic. de Eire.

## CAP. XIV.

## Of Burglary.

**A** Burglar (or the person that committeth Burglary) is by the *a* Common Law a Felon, that in the night breaketh and entrench into a mansion house of another, of intent to kill some reasonable creature, or to commit some other Felony within the same, whether his felonious intent be executed or not. We call it in Latin Burglaria: and in Statuto de officio Coronat. the offenders are called Raptores domorum.

This word *b* Burglar is derived of these two words, viz. Burgh, signifying an house, and Laron signifying a thief, as it were an house-thief. *c* The Latons called it hurbrec, inter scelera inexpiable. And apely was it derived from Latro: for,

*a* Inter leg. Edm.  
cap. 6. fo. 76.  
*22* Deut. 2.

*b* Lib. 4. fo. 39.  
Brooks case.  
*c* Inter leges  
Canuti fo. 118.  
cap. 61. Lamb.  
*d* Horace lib. 1.  
Epist.  
*e* Britton fo. 17.

*d* Ut jugulent homines, surgunt de nocte latrones.

*e* Britton calleth him a Burgessor. Then let us peruse the branches of this description.

**I**n the night. *f* The word in the Indictment or Appeal, is, noctanter, id est, noctu. The natural day is divided in lucem, light, which is dies solaris, and in tenebras, which is night. *g* And therefore as long as the day-light continues, whereby a mans countenance may be discerned, it is called day: and when darkness comes and day-light is past, so as by the light of day you cannot discern the countenance of a man, then it is called night. *b* Posui tenebras & facta est nox, in qua pertranseunt bestie silvæ; sol oritur & congregatae sunt, exit homo ad opus & operationem suam, & redit vespere. This doth aggravate the offence, sith the night is the time wherein man is to rest, and wherein Beasts run about seeking their prey.

*f* 4 E. 6. Br. Cor.  
185.  
Stanf. Pl. Cor.  
fo. 30.

*g* 3 E. 3. cor. 293.

*b* Psal. 104.  
Lib. 7. fo. 6. b.  
Milborns case.

In ancient Records Crepusculum was signified, when it was said, Inter Canem & Lupum: for when the night begins, the Dog sleeps, and the Wolf seeks his prey. For so we find the entry oftentimes in the reign of E. 1. as taking one example for many, *i* Margeria filia Nicholai de Okele appellat Johannem Chose pro Raptu, & pace Regis fracta, die Martis, &c. inter Canem & Lupum, id est, inter diem & noctem, vel in crepusculo, anglice Twylight.

*i* Tr. 7 E. 1. co-  
ram Rege, Rot 12.  
Gloc.

*k* In placito de domo combusta malitiose hora vespertina, scilicet inter Canem & Lupum, venerunt malefactores, A. B. &c.

*k* Placita coronæ  
apud novum ca-  
strum anno 24 E. 1.  
Rot. 6. in dorso.  
*l* Hil. 3. R. 2. co-  
ram Rege Rot. 8.  
London.  
John Imperials  
case.  
*m* Bract. lib. 3. for  
144. b.  
Pardon.

*l* Ignitegium, à tegendo ignem, i. Cover le feu, hora octava post meridiem.

*m* Bracton saith, Si quis furem nocturnum occiderit, ita demum impune foret, si parcere ei sine periculo suo non potuit; si autem potuit, aliter erit, in manibus enim regis sunt vita & mors hominum, sicut coram Rege apud Windefore de quodam homine de Cocham, coram Gulielmo de Ralegh tunc Justiciario, cui dominus Rex in tali casu perdonavit mortem. Agræable hereunto was the Law of the twelve Tables, Si noctu furtum factum sit, jure casus est.



1 Mar. Dier 99.

[ Break and enter. ] The words of the Indictment be, Fregit & intravit : and this is understood of an actual breaking of the house, and not of a breaking in Law : for every entry into the house by a trespasser, is a breaking in Law, but in case of a Burglary, every entry is not a breaking of the house, for the words of the indictment be, Felonice & Burglariter fregit, &c. As if the dooz of a mansion house stand open, and the thief enter into the house with a purpose to steal, this is a breaking of the House in Law, and yet no Burglary, because there must be an actual breaking. So it is if the Window of the House be open, and a thief with a Hook or other engine draweth out some of the goods of the owner : this is no Burglary, because there is no actual breaking of the house. But if the thief breaketh the glass of the window, and with a Hook or other engine draweth out some of the goods of the owner, this is Burglary, for there was an actual breaking of the house. It is deemed an Entry, when the thief breaketh the house, and his body, or any part thereof, as his foot, or his arm, is within any part of the house : or when he putteth a Gun into a window which he hath broken, or into an hole of the house which he hath made, of intent to murder or kill ; or as hath been said, a Hook or other engine into any part of the house which he hath broken, of intent to steal : this being put by him into the house, is an Entry and breaking of the house. But if he doth barely break the house without any such entry at all, that is no Burglary, for it must be fregit & intravit.

\* If divers come in the night to do a Burglary, and one of them break & enter, the rest of them standing near to the dooz, or about other parts of the house, or at a Lanes end, or some Orchard gate, or Field gate, or the like, to watch that no help shall come to defend and aid the owner and dweller, this is Burglary in all.

That which is done in fraudem legis, the Law giveth no benefit thereof to the party. As if Thieves come in the night with Hue and Cry, pretending that they be robbed, and shall require the Constable to search for the felons, and whilst he goeth with them into some mans house, they bind and rob the Constable, and dweller, this is Burglary ; for in judgment of Law it is their act.

[ Into a Mansion-house. ] The Indictment saith, Domus mansionalis, a mansion or dwelling house.

a Domus mansionalis is divided into two branches, viz. to Inset Coisices, as Hall, Parler, Buttry, Kitching, and Lodging-chambers, &c. and the Outset buildings, as Barnes, Stables, Cow-houses, Dairies, &c. all these are parcels of the Mansion house, and will pass by the name of Domus mansionalis. And albeit every Mansion-house hath not all these buildings, yet every house for the dwelling and habitation of man is taken to be a Mansion-house, wherein Burglary may be committed.

b If a man hath a Mansion-house, and upon some accident he and all his family some part of the night are out of the house, and in the mean time a thief break and enter into the house, of intent to steal ; this is Burglary, although neither the owner nor any of his family is in the house : for the Indictment of Burglary is, Domum mansionalem, &c. fregit, &c. and this is Domus mansionalis. c See hereafter the Statutes of 23 H. 8. and 5 E. 6.

d If a man do break and enter a Church in the night, of intent to steal, &c. this is Burglary, for Ecclesia est domus mansionalis omnipotentis Dei. e Frustra legis auxilium invocat, qui in legem committit. f Domus mea domus orationis vocabitur, vos autem fecistis illam speluncam latronum. Sacrilegium derivatur a sacro & legere, id est, furari.

A Tent or Booth in Fair or Market, is not Domus mansionalis, but of another name or kind ; g but that is provided for by the Statute of 5 E. 6. cap. 9. whether the robbery be done in the night, or in the day, the owner, &c. being with in the same, sleeping or waking. But a shop wherein any person doth converse being parcel of a Mansion-house, or not parcel, is taken for a Mansion-house.

Likewise

Sanf. Pl. Cor.

30. 2.

Dier 1 Mar. 99. d.

22 Aff. p. 19. 95.

\* 13 H. 4. 13.

a 2 E. 6. Br. Cor. 180.

Britton fo. 17.

b Lib. 4. fo. 40. in Brooks case.

Hil. 38 Eliz. per les Justices, ibid.

c 23 H. 8. cap. 1.

5 E. 6. cap. 9.

See Inter legis

Alveredi c. 6.

d Britton fo. 17.

Dier, 1 Mar. 99.

22 E. 3. tit. cor.

264.

22 Aff. p. 95.

26 Aff. 19.

e 27 Aff. 42.

20 E. 2. Cor. 283.

12 E. 3. Cor. 120.

Rot. Claus.

3 E. 3. m. 2. & 18.

the Ordinary

may allow clergy for Sacrilege.

Lib. 11. fo. 29.

f Matth. 21. 23.

g 5 E. 6. cap. 9.



Likewise a Chamber or room, be it upper or lower, wherein any person doth inhabit or dwell, is *Domus mansionalis* in Law.

Our ancient Authors and old Records did express Burglary under this word, *Hamslockne*, or *Hamslockne*. The first is derived from two Saxon words, viz. of *Ham* that signifieth a Mansion-house, *Domus mansionalis*, which to this day we call our home: and *Suckne* or *Succen*, that is *Sceken*, as much to say, as to seek a man in his house to slay or rob him.

It is to be noted that our ancient Authors, nor our old Book Cases do distinguish between the day and the night, when the offence should be committed in the house, save only the *Mirror*.

Si quis *Hamslockne*, quæ dicitur *invasio domus contra pacem Domini Regis*, in *domo sua* se defenderit, & *invasor* occisus est, *imperfectus* & *inultus* remanebit, si ille quem *invalit* aliter se defendere non potuit: dicitur enim quod non est dignus habere pacem, qui non vult observare eam. And the *Mirror* saith, *Hamsokne* de auncient ordinance est *peche mortel*, car droit est que chescun eyt quiet en son hostel, q̄ a la ley est.

*Eraſon* l. b. 3. fo. 144. b.  
*Britton* fo. 33.  
*Statute* Wal. fo. 61. ter. de Snodon.  
*Mirr.* cap. 1. § 11. de *Hamslockne*.  
*Exposit.* vocab. inter *statuta*.  
*Fleta* l. b. 1. ca. 42.  
13 H. 4. fol. 7. tit. Cor. 299.

Others derive *Hamsokne* from *Ham*, which of both sides is confessed to be a Mansion-house, and *Sockne* which signifies a Court, as much to say, as to have jurisdiction, or to hold plea of offences done to a man in his house.

One was Indicted *Quod clausum I. S. fregit, &c. ad ipsum interficiendum*. This is not Felony without any act done, though it were noſtanter: For the Appeal and Indictment of Burglary is, *Quod domum mansionalem, &c. fregit & intravit*. So as neither close nor any other place, but the Mansion-house only is required to make Burglary. But Burglary may be committed as well in the outſet buildings, as in the inſet, for all are parts of the Mansion-house, and he that breaketh any of the outſet buildings doth break *Domum mansionalem*, as well as he that breaks the inſet.

[Of intent to kill.] If a man be Indicted, that he in the night time did feloniously break the house of I. S. *ad verberandum ipsum I. S.* this is no Burglary, because it was but to beat, and not to kill. But if it were *ad interficiendum I. S.* then it is Burglary, though he never touched him; for the intent must be to commit Felony, and not Trespas, or other thing that is not Felony, the words of the appeal or Indictment being, *Quod Felonice & Burglariter fregit, & intravit, &c.* so as there must be a Felonious and Burglarious intent.

13 H. 4. ubi. ſup.

[Or to commit some other Felony.] They be Burglers which break any house or Church in the night, although they take away nothing: otherwise it is of Robbery, as shall be said hereafter: See *Stanf. Pl. Cor.* 30. b.

22 E. 3. cor. 244.  
22 Aſſ. 39. & 95.

The Statutes of 23 H. 8. cap. 1. and 5 E. 6. cap. 9. do not define what Burglary is, but take away the benefit of Clergy from certain kinds of Burglary. As when an actual robbery is done, and when the owner or dweller, &c. is put in fear, &c. or when the owner or dweller &c. is sleeping or waking within any place within the precinct of the same house: these circumstances do aggravate the Burglary: and therefore the makers of those Statutes took away the benefit of Clergy not in all cases of Burglary, but in those particular cases where a robbery is done, &c. But the Statute of 18 Eliz. cap. 6. hath taken away the benefit of Clergy in all cases of Burglary: and hereby a good and equal proportion is kept in all cases of this nature. And both acts of Parliament, and the resolution of Judges do well agree together, which some not well observing have published manifest errors, which being in case of life are fit to be reformed.

23 H. 8. cap. 1.  
5 E. 6. ca. 9.

Clergy.  
18 Eliz. cap. 6.

If any man shall break a house by day, and take away thence money or goods to the value of five shillings or more, in any part of a dwelling house, or outhouse belonging to the same, though no person be therein, for this Felony he shall lose the benefit of his Clergy, so as for this offence the party shall suffer death, as in case of Burglary.

39 Eliz. cap. 14.



## CAP. XV.

## Of burning of Houses.

De incendiariis  
Inter leges Æthel-  
stani cap. 6. fo. 61.  
Et Canuti cap. 61.  
fo. 118.  
Husbernet numera-  
tur inter scelera  
in expiabilia.  
b Cap. itineris.  
Bract. l. 3. 146.b.

Britton fo. 16.

Fleta l. 1. cap. 35.  
De combustionibus.

Mirror. cap. 1. § 8.  
De Ardours  
cap. 2. §. 11. De  
Appeal darson.  
& §. 12. cap. 3. §.  
Al arson.  
\* Oubiens. W. 1.  
cap. 15.

Hil. 7. E. 2. coram  
rege Rot. 24. Norff.  
8 H. 6. cap. 6  
See 15 H. 6. nu. 23.

All the ancient Au-  
thors.

3 H. 7. 10.  
11 H. 7. 1.  
23 H. 8. cap. 1.  
25 H. 8. cap. 3.  
5 & 6 E. 6. cap. 9.  
4 & 5 Ph. & Mar.  
cap. 4. lib. 11.  
fo. 35. Alex-  
ander Poulters  
case.  
3 H. 7. ubi supra.

**H**AVING now spoken of Burglaries, and Felonies concerning houses, there  
there resteth one other of that kind, wherewith we will conclude this  
division, and that is, Burners of houses: which being a Felony by  
the Common Law, let us see what our ancient Authoꝝ, and old Parliaments,  
and Records have left unto us thereof.

a The ancient article of the Oire was, De incendiariis nocturnis vel diurnis,  
& combustionibus tempore pacis nequiter perpetratis.

b Hereof Bracton saith. Si quis turbata seditione incendium fecerit nequiter &  
in feloniam, vel ob inimicitiam, vel alia de causa, capitali sententia punietur. Ne-  
quiter dico, quia incendia fortuita, vel per negligentiam facta, & non mala consci-  
entia, non sic puniuntur, quia civiliter agitur contra tales.

Britton saith, Soit inquire de ceux que feloniouslyment en temps de peace aient  
autres blees, ou autres maisons arses, & ceux que ferr' de ceo attainit, soient arses,  
issint que ils soient punies per mesme le chose dont ilz pecherent.

Fleta saith, Si quis ædes alienas nequiter ob inimicitiam, vel prædæ causa tem-  
pore pacis combusserit, & inde convictus fuerit per Apellum, vel sine, capitali de-  
bet sententia puniri.

The Mirror, Ardours sont, que ardent citie, ville, maison home, maison  
beast, ou autres cateux, de lour felonie en temps de pace pur hame ou vengeance,  
&c. In Appeal De Arson. Issint Jeo dise, &c. Que Sebright illonque est defamy,  
&c. de ceo que a tiel jour, &c. en tiel maison, ou biens, mist le feu, &c. And  
afterwards en respons al arson. Al arson poit il dire, que laventure avient de  
mischance, & nient de felony purpense.

So hainous was this offence that in Anno. 3 E. 1. it was declared by Parli-  
ament, Que seux queux sont prises pur arson feloniouslyment fait, ne soient en as-  
cun manner replevisables. Adjudicantur suspendi, qui ex malitia præcogitata com-  
buserunt magnam partem de Lynne in Com. Norff.

Upon dispersing of bills, threatening burning of houses, &c. was made high  
Treason, whereof more hereafter: but that act is repealed by 1 E. 6. cap. 12.  
and 1 Ma. Now upon that which hath been said, our purpose is to frame a de-  
scription of this Felony, as may also be warranted by our Year-books, and the  
common opinion and experience at this day.

¶ Burning is a Felony at the Common Law, committed by any that mali-  
ciously and voluntarily, in the night or day, burneth the house of another.

Now let us peruse this description by all his material parts.

¶ Burning. ] Putting of fire into any part of a house, whereby that part  
burneth. For it is necessary, that there be a burning, but it is not necessary that  
all or any part be wholly burnt, nor that the fire hath any continuance, but the  
intent only sufficeth not. As if one put fire into any part of a house, and it burn-  
eth not, this is no Felony, for the words of the Indictment be, Incendit & com-  
bussit. Again, if it doth burn, though it goeth out of it self, it is Felony.

¶ By the Common Law. ] This is proved by all the ancient Au-  
thoꝝ, Acts of Parliament, and Books aforesaid, and the reason thereof is, for  
that burning of houses being an hostile action, is presumed in Law to be done  
maliciously for revenge, and as an enemy, to consume the same by fire in time of  
peace



peace. It was made in special manner High Treason (as before is said) viz. 8 H. 6. ca. 6. if any threathned by casting of bills, to burn an house, if money be not laid in a certain place, and after did burn the house: but this Treason is repealed by 3 H. 7. 10. Per. Brion. High Treason. 1 E. 6. cap. 12. and 1 Mar. but yet the Felony remaineth still: for In proditione (as hath been said) implicatur feloniam.

[Maliciously and voluntarily.] Proved also by the words of the Indictment, which be, Voluntariè ex malitia sua præcogitata, & felonice. For if it be done by mischance, or negligence, it is no Felony, as before it appeareth.

The Law doth sometime imply, that the house was burnt maliciously, and voluntarily. As if one intend to burn the house of A. only, and not the house of B. and yet in burning the house of A. the house of B. is burnt; in this case the burning of the house B. is Felony, because it proceeded of the malicious and voluntary burning of the house of A. and the event shall be coupled to the cause, which was voluntary and malicious: and therefore in the Indictment for the burning of the house of B. it shall be said. Voluntariè ex malitia sua præcogitata, & felonice, &c. Pl. Com. fo. 475.

[The house of another.] This is not only intended of Inset houses, parcel of the Mansion-house, but to the Outset also, as Barn, Stable, Cow-house, Sheep-house, Dairy-house, Mil-house, and the like, parcel of the Mansion-house: but burning of a Barn, being no parcel of a Mansion-house, is no Felony: and yet if there be Corn or Hay within it, the burning thereof is Felony, though the Barn be not part of a Mansion-house. \* But the offender is not ousted of his Clergy but where he burns some part of a Mansion-house, or a Barn with Corn. Tr. 44. Eliz. Coram rege Rot. 20. 229. Lib. Int. Coke fo. 25. b. Lib. 4. fo. 20. Barhams case. \* Pl. Com. 475.

Note the ancient Authoꝝ extended this Felony further then houses, viz. to stacks of Corn, Waynes or Caris of Coal, Wood or other goods. And it is said in 3 H. 7. ubi supra, Certum est quod crematio domorum felonice fuit feloniam per communem legem.

The attempt to burn a stack of Corn was made Felony by the Statute of 3 & 4 E. 6. c. 5. 3 & 4 E. 6. but this is repealed by 1 Maria.

Burning of the frame of a house was made Felony by the Statute of 37 H. 8. because the frame of a house is no house: but that is repealed by 1 E. 6. cap. 12. & 1 Maria. 37 H. 8. ca. 6.

43 Eliz. cap. 13. It is Felony if any within the Counties of Cumberland, Northumberland, Westmerland, or the B. of Duresm wilfully, and of malice burn or cause to be burnt any Barn or stack of Corn or grain, without benefit of Clergy. 43 El. ca. 13.

Note a diversity between the Indictment of Burglary and burning; for the Indictment of Burglary must say, (as hath been said) domum mansionalem, but so need not the Indictment of burning, but domum viz. a Barn, &c. Bait-house, or the like. Bra. lib. 3. fo. 146. b.



## CAP. XVI.

## Of Robbery.

See the 1. part of  
the institutes.

§. 501.

Custom. de Norm.  
cap. 71.

Int. leges Canu.  
cap. 61. fo. 118.

Lamb.

b Bracton li. 3.  
fo. 146.

Bracton lib. 3.

fo. 150 b.

Britton fo. 22.

Fleta lib. 1.

ca. 37. Mirror.

cap. 1. §. 10.

Britton & Fleta

Ubi supra.

14 E. 3. cor. 115.

Bract. lib. 3. fol.

150. b.

10 H. 3. Cor. 434.

Britton fo. 24. b.

44 E. 3. 14.

4 H. 4. 2.

**R**obbery is a Felony by the Common Law, committed by a violent assault upon the person of another, by putting him in fear, and taking from his person his money or other goods of any value whatsoever. *See* Inter leges Canuti, apertæ compilationes numerantur inter scelere hominum in-  
expiabilia.

¶ **Robbery.** ] *b* It is derived de la Robe, both because in antient times (as sometime yet is done) they bereave the true man of some of his robes or garments, and also for that his money or other goods are taken from his person, that is, from or out of some part of his garment, or robe about his person. And is ranked in this place, for that it concerneth not only the goods, but the person of the owner. We call it Robberia & rapina, and the thief Raptor. Whereof Bracton saith, Est enim quasi furtum rapinæ, quæ idem est, quantum ad nos, quod roberia, & est genus contractationis contra voluntatem Domini, & similis poena sequitur utrunque delictum, unde prædo dicitur fur improbus: quis enim magis contractat rem alienam invito domino, quam ille qui rapit?

¶ **Felony by the Common Law.** ] This is agreed of, of all, both ancient and late, without any question, and it is deemed in Law to be among the most hainous Felonies, Crimen improbißimum.

¶ **Violent Assault.** ] This agreeth with the Indictment, Violenter & felonice cepit, &c.

¶ **By putting him in fear.** ] This agreeth also with the Indictment: and this circumstance maketh the difference between a Robber and a Cut-purse: both take it from the person, but this takes it clam & secretè, without assault or putting in fear, and the Robber by violent assault, and putting in fear. If one cut a purse, with money in it above twelve pence, he shall be hanged, and the benefit of Clergy is taken from him. But of ancient time the punishment was otherwise. S. captus in London cum bursa quam scidit cum tribus solidis, & hoc non potuit dedicere, & ideo amittat dextrum pollicem. Britton saith, Des cinsors des burfes, voylons que celuy que la burse coupa si auter mavieste ne eyc feyt, eyt judgment de Pillory; & silz eyent emble auter chose meinder de 12. deniers, perdent un oraile, & si le chose passe 12. deniers eyent judgment de mort.

¶ **By taking.** ] The words of the Indictment be, Violenter & felonice cepit. Hic opus est interprete. For it must be understood, that there is an actual taking in deed, and a taking in Law, and that may be, when a thief receiveth, &c. For example: If thieves rob a true man, and find but little about him, take it, this is an actual taking; and by means of death, compell him to swear upon a Book to fetch them a greater sum, which he doth, and deliver it unto them, which they receive, this is a taking in Law by them, and adjudged Robbery: For fear made him to take the oath, and the oath, and fear continuing, made him bring the money, which amounteth to a taking in Law, and in this case there need no special Indictment, but the general Indictment, (quod violenter & felonice cepit) is sufficient. And so it is, if at the first, the true man for fear deliver his purse, &c. to the thief.

This



This word [cepit] necessarily implieth, that the thief must be in possession of the thing stolen: For example, If the bag or purse of the true man be fastned to his girdle, &c. and the thief the more easily to take the bag or purse, do cut the girdle, whereby the bag or purse falleth to the ground, this is no taking, for the thief had never any possession thereof, & sic de similibus: but if the thief had taken up the bag, or purse, and in striving had let it fall, and never took it again, this had been a taking, because he had it in his possession; for the continuance of his possession is not required by Law.

¶ From his person. ] The words of the Indictment be, a persona, &c. If the true man seeking to escape, for the safeguard of his mony, cast it into a bush, which the thief perceiving, takes it; This is a taking in Law from the person, because it is done at one time. If the true man had cast off his surcote, or other uppermost garment, and the same lying in his presence, a thief assault him, &c. and take the surcote, this is robbery; for that which is taken in his presence, is in Law taken from his person: And so it is of the horse of a true man, which stands by him, Et sic de similibus.

In ancient Authors and Records, in Pleas of the Crown, you shall read of Sakebere, &c. whom we will derive and explain. Sakebere, Sacbere, or Sacburgh, Sac, or Sak is an ancient French word, and signifieth a bag, purse, or pouch. So that Sackbere is he that did bear the bag, &c. and in legal understanding, is he that was robbed of his mony in his bag. And this agreeth with the interpretation thereof by Bracton, viz. Furtum vero manifestum est, ubi latro deprehensus est scilicet de aliquo latrocinio, viz. Hondhabende, & Bacherende, & insecutus fuerit per aliquem cujus res illa fuerit, qui dicitur Sacaburth. And herewith agreeth Fleta lib. 1. c. 42. §. Sunt autem, &c. And Britton fo. 22. b. & 72. b. agreeth herewith, and calleth him Sakebere; and so doth Justice Stanford, Pl. cor. fo. 28. term him, which (as we take it) is his right name derived of these two words, Sac and bere, that is, he that did bear the bag, &c.

Bract. lib. 3. fol. 150. b.  
Fleta l. 1. cap. 42.  
Britton fo. 22. b.  
& 72. b.  
Stanf. fo. 28.

¶ Of what value soever. ] Though it be under the value of twelve pence that is taken, (as to the value of a penny or two pence) it is robbery, but somewhat must be taken; for the assault only to rob without taking some mony or goods is no felony, and such opinions as seem to the contrary, were maintained by that, which then was anciently holden, Quod voluntas reputabatur pro facto. See before cap. High Treason fo. 5. Infidiator viarum.

14 E. 3. Cor. 115.  
22 Aff. p. 39.  
27 Aff. 38.  
24 E. 3. 42.  
13 H. 4. 7.  
7 E. 4. 28.

## CAP. XVII.

### In what cases breakers of prisons are Felons.

WE have spoken sufficiently hereof in his proper place, in the exposition of the Statute of 1 E. 2. de Frangentibus prisonam. Only this is to be added, that in case of Felony, the offender shall have the benefit of Clergy, for the breach of prison.

In the second part of the Institutes upon the Statute of 1 E. 2. De frangentibus prisonam



## CAP. XVIII.

## Where escape Voluntary is Felony.

**W**E have also spoken somewhat hereof in the exposition of the said Act of 1 E. 2. And the voluntary escape can be no Felony in the Gaoler, unless the Prisoner be under custody by lawful Warrant expressing the offence, which you may see there at large.

2. There must be a Felony done at the time of the escape: for a relation which is but a fiction in Law, shall never make a man a Felon, as likewise there it appeareth. See Stanford lib. 1. cap. 26.

## CAP. XIX.

## Of Felony by stealing, carrying away, withdrawing or avoiding of Records, &amp;c.

8 H. 6. cap. 12.

8 H. 6. ca. 12.

**S**I ascun Record ou parcel dicel, Brief, Retorn, Pannel, Proces, ou Garrant d' Attorney en les Courts le Roy, de Chancery, Eschequer, lun Banke ou lauter, ou sa Tresorie, soit volontairement emblee, emport, retreit, ou avoide per ascun Clerke, ou auter person, a cause de quel ascun Judgement soit reverse: Que tiel embleor, emporter, retraber, & avoider, lour procurators, concellors, & abettors ent endites, & sur proces sur ceo fait, ont duement convicts per lour proper confession, ou per enquests prender des loial homes, (dont la moity soit des homes dascun Court de mesme les Courts, & lauter moity des auters) soient adjudges pur felons, & encorgent la pain de felony, & que les Judges de les Courts de lun Banke, ou de lauter eyent power de oier & terminer tielz defaults devant eux, & ent fait punition, come devant est dit.

**I**F any Record or parcel of the same, Writ, Retorn, Pannel, Process or Warrant of Attorney in the Kings Courts of Chancery, Exchequer, the one Bench or the other, or in his Treasury be willingly stoln, taken away, withdrawn, or avoided by any Clerk, or by other person, because whereof any judgment shall be reversed: That such stealer, taker away, withdrawer, or avoider, their procurators, counsellors, and abettors, thereof indicted, and by Process thereupon made thereof duly convict by their own confession, or by inquest to be taken of lawful men, (whereof the one half shall be of the men of any Court of the same Courts, and the other half of others) shall be judged for Felons,



Felons, and shall incur the pain of Felony. And that the Judges of the said Courts, of the one Bench or of the other, have power to hear and determine such defaults before them, and thereof to make due punishment, as afore is said.

The mischief before this Statute, was, That whereas Records are of such high nature and credit, as they import in themselves absolute verity without contradiction; to the end that there might be an end of contention and controversies, and men might rest in safety and repose, certain Clerks and other persons did often times imbevel Records or some parcel of them, and sometimes a Writ, Return, Panel, Process, or Warrant of Attorney, or rafe or vitiate the same; by reason whereof divers judgments were avoided or reversed, whereby no man as the Statute saith) had any thing in surety. This was a great mispission, for the which the offenders therein might be punished, either at the suit of the King by indictment, or at the suit of the party by an Action upon his case. See the Record concerning this matter following. *Placita coram Justiciariis de Banco Termino Trinitatis, Anno 19 E. 1. Rot. 57. indors.*

*Radulphus de Greshope communis Attornatus de com. Westmerland malitiose Rotulum excurtavit & absceidit, & ideo per annum & diem committitur Turri London, Postea Anno 20 E. 3. per mandatum Regis liberatur, & per Justiciarios ei est inhibitum ne de cætero in eadem curia de aliquibus negotiis se intromittat.*

Which remedy and punishment were thought too weak against Clerks and other persons, which (committing such things) commonly were of small ability: therefore this Act, considering the danger of the offence, maketh the same Felony, as by the letter thereof appeareth.

[ Si ascun \* Record. ] A Record is regularly a Monument or Act Judicial before a Judge, or Judges, in a Court of Record entred in (a) Parchment in the right Roll. It is called a Record, for that it recordeth or beareth witness of the truth, and is derived of the Verb Recorder, where of the Poet speaketh.

— Si rite audita recordor.

It hath this sovereign Privilege, that it is proved by no other but by it self. Monumenta (quæ nos Record vocamus) sunt vetustatis & veritatis vestigia. And albeit the cause adjudged be particular, yet when it is entred of Record, it is of great authority in Law, and serve for perpetual evidence, and therefore ought to be common to all, yea, though it be against the King: as it is declared by Act of Parliament in Anno 46 E. 3. which you may read in the Preface to the third Book of my Reports.

[ Brief, Retorne, Panel, Process, ou Garr'D'attornie. ] All these are sufficiently known, and yet have we treated of the same in the First part of the Institutes.

[ En les Courts le Roy. ] Here are expressly named four of the Kings Courts, viz. the Chancery, the Exchequer, the Kings Bench, and the Court of Common Pleas, and hereunto is added the Kings Treasury: So as this Act extendeth not to any other Court or place then is here named.

[ Chancery. ] This must be understood of the Court of Chancery, which proceedeth according to the course of the Common Law, as in case of privilege, of Scire Facias upon Recognizances, Traverses of Offices and the like: for as to these it is a Court of Record, but as to the proceeding by English Bill in course of equity, it is no Court of Record, for thereupon no Writ of Error lyeth, as in the other cases.

[ Ou la Treasury. ] The Kings Treasury is called *Theauraria Regis*, the place where the Kings Treasure is kept. This Treasure is twofold, viz. his Money or Coin: and another, that is far more precious and excellent,

It

those

\* See the first part of the Institutes.

Sect. 117. for this word.

(a) 9 E. 4. 3. b. 16 El. Dy. 330. 2.

Virgil.

Rot. Parl. 46 E. 3.

9 H. 7. 16. See the Preface to the third Book.

37 H. 6. 14.



Register.  
H. N. B. 224. d.

those be the sacred Judgements, Records, and other Judicial proceedings under the safe custody of the Treasurer, and Chamberlains of the Exchequer. And this Treasury is partly in the Exchequer, and partly in the Tower of London: For there be ancient Rolls of the Treasury remaining in the Tower. And therefore this Act intending to include both the one and the other, saith generally, en sa Treasorie.

¶ Soit voluntarement emblee, emport, retireit, ou avoide, ] In the Indictment upon this Statute besides Felonicè, this word [ voluntariè ] must of necessity be used, to agree with this Act. Here be four words used, emblee stolen, emport carried away, retireit withdrawn, ou avoide or avoided. So as the sense is, if any Record or part of it, Writ, Return, Pannel, Process or Warrant of Attorney, &c. be stolen, carried away, withdrawn, or avoided, &c. And this word [ avoided ] is a large word, and doth include rasing or clipping, or cutting off the side, or other part of the Roll, or any other kind of avoiding the same.

2 R. 3. 10.

2 R. 3. 10.

8 R. 2. cap. 4.

2 R. 3. 10.

2 R. 3. 10.

¶ Per ascun Clerk ou auter person. ] This Act doth not extend to any Judge of the Court; both because it beginneth with a Clerk, &c. and for that by the Statute of 8 R. 2. a penalty is inflicted upon a Judge, &c. for making any false Entry, rasing any Roll, or changing any Verdict. See the Stat. for it entendeth also to Clerks. Only this is to be observed in that Stat. that where it is said, [ the King and his Council, ] it is intended of the Court of Justice where the matter dependeth: for the Judges are the Kings Council for Judicature and proceedings according to Law and Justice.

Justice Ingham paid in the reign of E. 1. Eight hundred Marks for a Fine for that a poor man being fined in an action of debt at thirteen shillings four pence, the said Justice moved with pity caused the Roll to be rased, and made it six shillings eight pence.

This case Justice Southcot remembred, when Carlyn Chief Justice of the Kings Bench in the reign of Queen Elizabeth, would have ordered a rasure of a Roll in the like case, which Southcot, one of the Judges of that Court, utterly denyed to assent unto, and said openly, That he meant not to build a Clock-house: for (said he) with the Fine that Ingham paid for the like matter, the Clock-house at Westminster was builded, and furnished with a Clock, which continueth to this day.

¶ A cause de quel ascun judgement soit revers. ] This Act extendeth only to Records, whereupon Judgment is given. But whether Judgment be given in causes Criminal at the suit of the King upon an Indictment, or at the suit of the party in an Appeal, or in Actions real, personal, or mixt, or of the like nature, this Act extends therunto, if Judgment be afterwards given, and to outlawries, for there Judgment is given per judicium Coronatorum. For it is not material whether the act be done against this Statute, either before or after Judgment, so Judgment be given.

2 R. 3. 10.

¶ Revers. ] Is here taken, not only where the Judgment is made erroneous and to be reversed by Writ of Error, but where the Judgment is so annihilated and made void, as it bindeth not, or may be reversed or avoided by Plea. See the Book in 2 R. 3. fol. 10. which expoundeth well this Statute.

¶ Que tiel embleor, emporteur, &c. lour Procurers, Counselors & Abettors, &c. ] This Act expressly extendeth to Accessories, before, and leaveth accessories after to the construction of Law, yet may there be accessories after the fact: for whensoever an offence is made a Felony by Act of Parliament, there shall be accessories to it both before and after, as if it had been a Felony by the Common Law, and therefore though this Act expresseth accessories

Vid. 3. & 4. Ph. & Maria.  
Justice Dalisons  
Reports, ubi supra.



accessories before, yet it taketh not away accessories after, but leaveth them <sup>53</sup> Stanf. Pl. Cor. the Law, contrary to the opinion of Justice Stanford. <sup>44</sup> b. So before the Exposition <sup>3</sup> H. 7. cap. 2. of 3 H. 7. for taking away of Wlomen against their will.

¶ Ent endites. ] If the acts that make this Felony, be committed in two <sup>2</sup> R. 3. fo. 10. Counties, the Indictment faileth, as hath been said before upon the Statute of 2 & 3 E. 6. cap. 24. And this case of Felony rising in two Counties, is not holpen by any Statute yet made.

¶ Dont la moity soit deshormes dascun court. ] Here is a party Jury, the one half to be of the Officers and Clerks of the Court, &c. for their knowledge, and for the better information of the others.

¶ Et que les Judges des dits Courts de lun Bank ou delauter eyent power de oier & terminer tiels defaults devant eux, & ent faire punition, come est avantdit. ] This clause is in nature of a Commission to the Justices of either Bench, if the offence be committed in the County where the Benches do sit. And the Justices of either Bench have a concurrent authority, and which of them inquire first shall proceed: but if the Felony be committed in another County, then where the Benches sit (as for example, in Surry, Hertfordshire, &c.) there the Justices ought to have a Commission. But if the Bench sit in Middlesex, and the Felony is done in London, <sup>2</sup> R. 3. 10: in which case a Commission is requisite, as is aforesaid. But then some have said, that by the Charters of London confirmed by Parliament, the Mayor ought <sup>2</sup> R. 3. 11: to be principal in the Commission, and the Mayor is none of the Judges authorized by this Act to hear and determine this Felony, but the Justices of the one Bench or the other: And therefore the Statute being penal, and to be taken strictly, no proceeding can be. Sed Salva res est: For the Charters of the City of London extend only to such offences committed in London, whereof the Mayor with others by Commission may inquire of, hear, and determine, and not to such offences so annexed by authority of Parliament to other persons (as in this case to the Justices of the one Bench or the other) as the Mayor is not warranted by the said Act to inquire, &c. And therefore a Commission in this case may be made to the Justices of the one Bench or the other, omitting the Mayor, ne Curia Regis deficeret in justitia exhibenda.

And albeit this kind of Felony is an heinous offence, yet may the offenders <sup>4</sup> H. 7. cap. 13. therein have their Clergy: For untill the reign of H. 7. (that we may note it <sup>12</sup> H. 7. cap. ult. once for all) the benefit of Clergy was not taken away by any Act of Parliament in case of Felony. As for the Statute of Bigamis made in 4 E. 1. it was but an exposition and allowance of the constitution made at the general Council at Lyons concerning the same, as before hath been said. But (as we remember) the first Statute making a new Felony that took away the benefit of Clergy, was <sup>7</sup> H. 7. cap. 1: the Statute of 7 H. 7. concerning Soldiers. Vide Lib. 8. fol. 160. & lib. 11. fo. 11.



## CAP. XX.

## Of Felony in such as use the Craft of Multiplication.

5 H. 4. cap. 4.

**N**One from henceforth shall use to multiply gold or silver, or use the craft of Multiplication: and if any the same do, he shall incur the pain of Felony.

This is the shortest Act of Parliament that we remember; before the making whereof, divers of the Nobility, Gentry, and others did waste and consume a great part of their inheritance, and wealth, about the art of Multiplication, by the subtil and sinister perswasion of certain imposters and deceivers, which took upon them to be skilful therein, and to be able to multiply gold and silver, being themselves for the most part very poor and indigent persons, of whom it was said, *Quod pollicentur aliis ingentes divitias, & ipsi petunt parvas drachmas.* See Chaucer our English Poet, who wrote about the time of the making of this Act, in the tale of the Channons Peoman, fo. 63. (in libro meo,) that the end of this sliding and cursed craft (so full of imposture and deceit) is extream beggery: He is worth the reading, for he discovereth the secrets of this Craft, as our Act terms it.

Now seeing the end of this feigned Art of Multiplication is meer deceit, and tendeth to the undoing of many; At this Parliament the use of this craft of Multiplication is made Felony. For the better understanding of that which shall be said, it is to be known, that there are six kinds of metals, viz. Aurum, Argentum, Æs, sive Cuprum, (quia inventum fuit in Cypro) Stannum, Plumbum, & Ferrum. That is to say, Gold, Silver, Copper, Tynne, Lead, and Iron; for Chalybs Steel is but the harder part of Iron, and Orichalcum, Aurichalcum, viz. Lattyn or Wals is compounded of Copper and other things.

[The craft of Multiplication.] That is, to change other metals into very Gold or Silver. And this they pretend to do by a Quint essence, or a fifth essence, four Essences or Elements we know, Fire, Air, Water and Earth, but say they, this Quint essence is a certain subtil and spiritual substance extracted out of things by separation from the four Elements, differing really from their essence, as Aqua vitæ, the spirit of wine or the like, and this is called Elixer or the Philosophers stone, and it is part of Alchemy, or Chemy, in Latine Ars Chemica. The Offenders therein are called Multipliers, Chymists, Alchemists, &c. There \* may be accessories to this new Felony, both before and after. King Henry the sixth, by his Letters Patents, De concilii sui deliberatione deputavit Wilm. Cautelo & alios cives civitatis London ad investigandam veritatem super hiis quæ in scriptis erunt eis monstrata, pro multiplicatione Nunismatis, tam de auro, quam argento, & quicquid in præmissis egerint, cum eorum opinione referrent in scriptis regi & concilio suo.

The like Letters Patents Anno 35 H. 6. pro Thoma Harvy & aliis. Rex (b) ex sua regali prærogativa, &c. dedit licentiam Johanni Faceby & aliis ad vestigandum, prosequendum, perficiendum quandam preciosissimam medicinam, quintam essentiam, lapidem Philosophorum nuncupatum, nec non potestatem faciendi & exercendi transmutationes metallorum in verum Aurum, & Argentum, with a Non obstante of this Statute of 5 H. 4 By these Letters Patents this Act is more explained than by any Record we have seen.

How these several kinds of metals, as is supposed, proceed originally from Sulphur

\* 7 E. 6. Dier 88.  
Rot. Pat. 34 H. 6.  
m. 13.

(a) Ro. Pat. 35 H. 6.

(b) Ro. Pat. 34 H. 6.  
m. 7.

Hanc artem sophisticam imposturam nominat Melanct. Mentendi & fallendi artem.

Petrarch. Erasmus in Colloquio Dæmonis præstigias.

Peucerus

Chaucer ubi supra. The cursed and sliding craft.

Vertitur in fumum quicquid ineptus agit.

See Pancirollus. Int. nova reperta Tit. 7. fo. 357.



Sulphur and Quick-silver, as from their Father and Mother, and other things concerning the same, you may at your leisure read in George Agricola, lib. 10. Vide Stanff. Pl. Cor. 37. b.  
 cap. 1. Encelms lib. cap. 1. Pl. com. 339.

Almighty God in the fourth day created the earth, and no mention is made of metals, for that they were as parts of the earth. Gen. cap. 1. v. 9. cap. 2. v. 11.

The fatal end of these five are beggary; This kind of Alchymist, the Monopolist, the concealer, the Informer, and Poetasters.

Sæpe pater dixit, Studium quid inutile tentas?

Mæonides nullas ipse reliquit opes.

I could give examples (of mine own observation) of all these, if it were pertinent to our purpose.

## C A P. XXI.

### Of Felony in Hunters in the night, or with painted faces, in any Forrest, Park, or Warren.

AT every such time as information shall be made of any unlawful huntings in any Forrest, Park, or Warren by night, or with painted Faces, to any of the Kings Council, or any of the Justices of the Kings Peace in the County where any such hunting shall be had, of any person to be suspected thereof, it shall be lawful to any of the same Councill, or Justices of Peace, to whom any such information shall be made, to make a warrant to the Sheriff of such County, or to any Constable, Bayliff, or other Officer within the same County, to take and arrest the same person and persons of whom such information shall be made, and to have him, or them before the maker of the same Warrant, or any other of the Kings said Council, or his Justices of Peace of the same County. And that the said Councillor or Justice of Peace, before whom such person, or persons shall be brought, by his discretion have power to examine him or them so brought, of the said hunting, and of the said doers in that behalf: and if the same person \* wilfully conceal the same huntings, or any person with him defective therein, that then the same concealment be against every such person so concealing Felony, and the same Felony to be enquired of and determined, as other Felonies within this Realm have used to be; and if he then confess the truth, and all that he shall be examined of, and knoweth in that behalf, that then the said offences of huntings by him done, be against the King our Sovereign Lord, but Trespass fineable, by reason of the same confession, at the next general Sessions of the Peace to be holden in the same County, by the Kings Justices of the same Sessions there to be sessed. And if any rescous, or disobedience be made to any person having authority to do execution, or Justice by any such warrant, by any person, the which so should be arrested, so that the execution of the same warrant thereby be not had, that then the same rescous and disobedience be Felony, inquirable, and deter-

1 H. 7. cap. 1.

\* See the exposition of this word [conceal] hereafter in this chap.



determinable, as is aforesaid. And over this, it is enacted and stablished, that if any person or persons hereafter be convict of any such huntings with painted Faces, Visors, or otherwise disguised, to the intent they should not be known or of unlawful hunting in time of night, that then the same person or persons so convict, to have like punishment, as he or they should have, if he or they were convict of Felony.

Now let us peruse the words of this new and ill penned Law.

¶ *Bynight, or with painted Faces.* ] That is to say, either by night or in the day with painted Faces, for that doth equal the case of the night, in respect the offenders cannot be known, or discerned, in regard of such disguisings. And albeit the body of the Act speaketh only of painted faces, yet it extendeth to visors and other disguisings, for those words are in the Preamble rehearsing the mischief, and the remedy must be applicable thereunto, and the last branch of this Act doth make this point clear.

¶ *As information shall be made, &c. of any person to be suspect.* ] Hereby it appeareth, that a bare information without shewing just cause of suspicion at the least, is not sufficient to ground a warrant according to this Act, for the words be, [ *Of any person to be suspected.* ] And this Act is general, and extends to all persons of what estate or degree soever, and as well to women as to men, for the words be [ *if any person.* ] And generalia verba sunt generaliter intelligenda. And it is necessary for him that taketh the information, to take it in writing, because it is the ground of his warrant.

21 E. 1. tit. Forests Rast. 19.

¶ *Of any unlawful huntings in any Forest, Park, or Warren.* ] This Act doth not extend to any Chase of the King, or of any other person, neither doth it extend to any Forests, Parks, or Warrens in use or reputation, and which are not Forests, Parks, or Warrens in Law. See the First part of the Institutes §. 378. What a Forest, a Chase, and a Park, &c. is.

¶ *To any of the Kings Council.* ] This is understood of the Kings Privy Council; and any one will serve, but he must be dwelling in the County where such offence is committed.

¶ *Or to any the Justices of the Kings Peace, &c.* ] And likewise any one Justice of the Peace will serve.

¶ *Warrant.* ] This Warrant ought to be in writing under the Seal of him that maketh it.

¶ *Before the maker of the same Warrant, or any other, &c.* ] So as the Officer may carry the party arrested before any Privy Councello, or Justice of Peace within that County, and to that effect must the warrant be made.

¶ *By his discretion have power to examine him or them so brought of the said hunting, and of the doers in that behalf.* ] So as the examination must consist upon two parts. First, of the hunting by the party himself. Secondly, of other doers in that behalf.

¶ *And if the said person wilfully conceal the said hunting, or any person with him defective therein.* ] This branch being in the disjunctive, if he conceal either his own offence, or of the other misdoers with him therein, the letter of this Act is that it is Felony, but by construction

D. Haward tempore H. 1. fo. 24. Vide Holl. 10 R. 1. 153. Vide Camden Brit. 210.



struction upon the whole Statute, it is no Felony: And a hunting without killing of any game, is within the danger of this Statute.

This Act is to be taken strictly; for it is the first Law that was made for the making of any Hunting Felony, against that excellent and equal branch of Carta de Foresta. Nullus de cætero vitam vel membra pro venatione nostra, &c. Cart. de Forest. See the Statutes of 21 E. 1. 1 E. 3. stat. 1. c. 8. 7 R. 2. c. 4. Westm. c. 8. Regist. cap. 10. fol. 9. F. N. B. fo. 67. Vet. N. B. 41. 45 E. 3. 7. 33 H. 8. Dier. 50.

The old Statutes concerning the Forests are called the good old Laws, and Customs, and commanded to be observed; and therefore this new Act of H. 7. is too severe for beasts that be *feræ natura*, whereof there can be no Felony by the Common Law, and that in case of the Forests, Parks, &c. of subjects which never was before: and therefore the Judges have made a favourable construction, as hereafter in this Chapter you shall find.

¶ And if he confess the truth, and all that he shall be examined of, and knoweth in that behalf. ] That is, of his own guiltiness, and of other misdoers with him, then this Act makes it no Felony, but trespasss fineable as it was before: But it must be a wilful concealment; therefore if he knew not the names of the other misdoers, or knew not whether they were there or no, it is no offence, for the concealment must be wilful. And seeing there is no time limited by this Act, and the concealment ought to be wilfull, it were reason, that the information made should be in convenient time after the fact done.

¶ And if any rescous or disobedience be made to any person having authority to do execution of Justice by any such warrant by any person, the which so should be arrested, so that execution of the same warrant be not had, that then the same rescous and disobedience be Felony. Here it is to be observed that the hunting being as yet no Felony, the rescous could not be Felony, if this branch had not been. Herein two things are to be considered; First, that it extendeth not but to the rescous, or disobedience, that is committed by the party himself, that is to be arrested, and not to any other. Secondly, that if the party rescue himself, yet if he be pursued and taken, so as execution of the warrant be had, it is no Felony, as it is manifest by the letter of this branch.

¶ And over this be it enacted, &c. That if any person or persons hereafter to be convict of any such huntings with painted faces, visors, or otherwise disguised, &c. or of unlawful hunting in the night, \* that then the said person or persons so convict, to have like punishment, as he or they should have, as if they were convict of Felony.

\* Nota [that the] &c. So as before such conviction there is no Felony.

Gerard the Queens Attorney General (who was a grave and reverend man) said openly in the Kings Bench, that it had been resolved by the Justices upon this Statute, that if a man in the night, or by day with painted face do hunt, &c. and being examined according to the Act and concealeth it, this is (upon the construction of the whole Act) no felony; for the first clause concerning concealment, and this clause which now we handle, must be coupled or joyned by construction together, viz. If any person be convict of such hunting with painted face, or of unlawful hunting in the night, this conviction must be upon not guilty pleaded, which the Justices expounded to be the \* concealment intended in the first branch, for they held that it ought to be a Judicial concealment, and not an extra-judicial concealment, before one of the Privy Counsel, or a Justice of Peace which may lye in averment, so as before it be Felony, he must be convicted of such hunting, &c. upon not guilty pleaded first: and after such conviction then

Mic. 19. & 20. El. in the Kings Bench a Report of the resolution of the Justices upon this branch.

\* Concealment expounded.



then must he be indicted again, *Super tota materia*, that he Felonice did conceal &c. against the form of the Statute: and if the offender upon the first Indictment confesseth the Indictment, then it is such a Judicial confession as this Act intendeth, and no Felony within this Statute. And this we heard the Attorney report, and then observed it, which concurring with our own Opinion we thought good to publish, and the rather for that in *Walter Lambards Book of Justice of Peace*, amongst his *Precedents of indictments*, an erroneous *Precedent* of an Indictment is of Felony for the concealment, &c. upon examination before *Justices of Peace*.

Dier 33 H. 8.  
fo. 50. a.

It is said in 33 H. 8. that chasing in Parks is made Felony, (intending this Statute) notwithstanding it may be made *Trespals* at the pleasure of the party, which we think is the clearest way.

Now what time shall be adjudged night, See before in the Chapter of *Burglary*. For this Felony the Delinquent may have his Clergy: See *Stanford* fo. 37. b.

## C H A P. XXII.

Of Felony for imbesilling the Kings Armor, Ordnance, &c. or Victual, to the value of twenty shillings, provided for Soldiers:

31 Eliz. cap. 4.

**B**E it enacted by the Authority of this present Parliament, that if any person or persons, having at any time hereafter the charge or custody of any Armor, Ordnance, Munition, Shot, Powder or Habiliments of War of the Queens Majesties, her Heirs, or Successors, or of any Victuals provided for the Victualling of any Soldiers, Gunners, Marriners, or Pioneers, shall for any lucre, or gain, or wittingly, advisedly, and of purpose to hinder or impeach her Majesties service, imbesel, purloin, or convey away any the same Armor, Ordnance, Munition, Shot, or Powder, Habiliments of War, or \* Victuals, to the value of twenty shillings, at one or several times: That then every such offence shall be judged Felony, and the offender and offenders therein to be tried, proceeded on, and suffer as in case of Felony: Provided alwayes, and be it enacted by the authority aforesaid, that none shall be impeached for any offence against this Statute, unless the same impeachment be prosecuted or begun within the year next after the offence done. And that this Act, nor any thing therein contained, nor any attainder nor attainders of any person or persons for any offence made Felony by this Act, shall in any wise extend, or be adjudged, interpreted, or expounded to make the offender or offenders to forfeit, or lose any Lands, Tenements, or hereditaments any longer, then during his or their life or lives, or to make any corruption of blood to any the heir or heirs, of any such offender or offenders, or to make the wife of any such offender to lose or forfeit her Dower, or title of Dower, of or in any Lands, Tene-

\*Nota for Victuals



tenements, or hereditaments, or her action or interest to the same: any thing in this Act contained, or any Attainder or Attainders hereafter to be had for any offence made felony by this Act to the contrary notwithstanding. And that such person and persons as shall be impeached for any offence made Felony by this Statute, shall by virtue of this Act be received, and admitted to make any lawful proof that he can, by lawful witness or otherwise, for his discharge and defence in that behalf, any Law to the contrary notwithstanding.

This is a necessary Law, and so penned, as it requirerh no curious Exposition.

[ Ordinance. ] That is, Guns or Artillery so called, of an Order, or Ordinance anciently made, of what bore, size, or bulk the same should be. And albeit the Ordinance (that we can find) is not extant, yet the name remaineth.

[ Habillements of War. ] Habillement is properly apparel or clothing: but in legal understanding it doth not only extend to Varnesse and Armour, but to all Utensils that belong to War, without which men have not ability to maintain War.

This Act making a new Felony, hath five excellent provisions, worthy to be imitated in all like cases of new Felonies. First, That none shall be impeached for this new Felony, but within a year after the offence done. Secondly, That the offender should not lose his lands any longer then during his life. Thirdly, This Act makes not any corruption of blood, but that his heir shall inherit. Fourthly, For to make the Wife lose her dower. Fifthly, That such persons as shall be impeached for any offence made Felony by this Act, shall be admitted to make any lawful proof <sup>a</sup> by witness, or otherwise for his discharge and defence in that behalf.

In the Statute of 4 Jacobi Regis, there is also a good president, viz. [ All which trials ( viz. in cases of Felony in that Act before mentioned ) b first for the better discovery of the truth, and secondly, for the better information of the consciences of the Jury and Justices, there shall be allowed to the party so arraigned the benefit of such witnesses only to be examined upon oath, that can be produced, for his better clearing and justification: ] that as witnesses are produced and sworn against him, so he may have witnesses produced and sworn for him, for Jurato creditur in judicio. And to say the truth, we never read in any Act of Parliament, ancient Author, Book case, or Record, that in criminal cases the party accused should not have witnesses sworn for him; and therefore there is not so much as scintilla juris against it. And I well remember when the Lord Treasurer Burleigh told Queen Elizabeth, Madam, Here is your Attorney General ( I being sent for ) Qui pro Domina Regina sequitur; she said, she would have the form of the Records altered; for it should be Attornatus Generalis qui pro Domina veritate sequitur. And when the fault is denied, truth cannot appear without witnesses.

Hobelarius ( id est, a Light-horseman ) Electus in Scotiam recepit armaturas & denarios, ibidem serviturus, postea non proficiscitur per mandatum Regis, & recusavit reddere armaturas, & denarios, &c. per Juratores est culp. & committitur Mareschallo, & finivit Regi 10 li. & invenit securitatem ad armaturas redeliberandas, &c.

Bonum est scire & sequi.

Vid. hercafter, Cap. of felony for any having a Plague-force, a more special provision.

a Nota.

4 Jac. Regis, cap. 1. b Nota, two excellent means for advancement of justice.

Hil. 15 E. 3. coram Rege. Rot. 129. Norff.



## CAP. XXIII.

Of Felony in such as pass the Sea to serve Forraign Princes, &c. or do serve Forraign Princes, &c. without taking the Oath of Obedience.

3 Jac. cap. 4.

**E**very Subject of this Realm that shall go or pass out of this Realm to serve any Forraign Prince, State, or Potentate, or shall pass over the Seas, and there shall voluntarily serve any such Forraign Prince, State or Potentate, not having before his or their going or passing, as aforesaid, taken the Oath of Obedience (prescribed by that Act) before the Customer and Controller of the Port, Haven, or Creek, or one of them, or their or either of their Deputy or Deputies, shall be a Felon.

Some have objected, that the going or passing out of this Realm, to serve, &c. cannot be tried; for that offences done out of the Realm, cannot without a special provision be tried within the Realm. And it is a sure Rule, that in criminal causes concerning life or member, *Ubi deliquit, ibi punietur*: the offence is local, and cannot be tried, but where it is committed, nor cannot be alleged to be in any other place, then where in truth it was done. To this it is answered, that by a later clause in this Act, this Felony shall be tried in the Town wherein the Haven or Port is, wherein he went or passed over: which Clause is, And be it further enacted, that all and every offence to be committed or done against this present Act, shall and may be inquired of, heard, and determined before the Justices of the Kings Bench, Justices of Assize and Gaol-delivery in their several Assizes; and all offences, other then Treason, shall be inquired of, heard, and determined before the Justices of Peace in their Quarter Sessions, to be holden within the Shire, Division, Limit, or Liberty, where such offence shall happen. So as by the Purvien and meaning of the makers of this Act, this Felony must be tried in the County where he went or passed over, and consequently in that Town where part of the act was done. And these words [and wherein such offence shall be committed] must be construed in this case, where part of the offence is committed. For, *Sic interpretandum est, ut verba accipiantur cum effectu*: and by the express words, all and every offence to be committed or done against this present Act must be inquired of, heard, and determined, &c. And therefore the Felony cannot pass away with impunity, and that which is done out of the Realm shall be proved to the Jury in evidence. Note, where a forraign Treason by this Act is made, it is enacted to be tried where the offender is taken.

See 33 H. 8. ca. 7.  
Simile.

¶ Every Subject of this Realm. ] This branch extends to all persons, of what estate, degree, or profession soever.

¶ To serve. ] Albeit the party did not serve, yet if the offender went or passed over to serve without taking the oath, he is in danger of this Statute. And this extendeth to any kind of service, either in Camp or Army, or in house or otherwise.

¶ Any forraign Prince. ] [Principes] Prince is here taken for the person that is Primus, i. e. Qui primum locum, & gradum obtinet, whether he be King, or any other that hath Sovereign Authority, by what name or title soever. The



The word hath other significations, but not pertinent to the exposition of this Act.

[ State. ] The former word [Prince] includeth any that is a Monarch, or in nature of a Monarch, or an absolute Prince. This word [State] extends to any State, either Aristocratical, where few be in authority, or Democratical, where the people have the chief government without any Superiour, saving such as they elect and chuse.

[ Potentate. ] This is a large word, and extendeth to Potentates as well Ecclesiastical as Temporal.

[ Or shall pass, &c. and there shall voluntarily serve. ] Although he went not over of purpose to serve, but upon some other occasion : yet if he after voluntarily serve any such forraign Prince, State, or Potentate, and have not taken the Oath, he is a Felon.

[ The Oath of Obedience. ] This is particularly set down in the said Act.

¶ And that if any \* Gentleman or person of higher degree, or any person or persons, which have borne, or shall bear any office or place of Captain, Lieutenant, or any other place, charge, or office in Camp, Army, or Company of Souldiers, or Conducker of Souldiers, shall after go or pass voluntarily out of this Realm to serve any such Forraign Prince, State, or Potentate, or shall voluntarily serve any such Prince, State, or Potentate, before he and they shall become bound by Obligation with two such sureties, as shall be allowed by the Officers, &c. shall be a Felon.

\* Vid. hereafter cap. 34. in fine. Second part of the Institutes. The Statute of additions. 1 H. 5. cap. 5.

By this Branch, if he be a Gentleman, or of higher degree, or any such Military Man, as here is described; because he is able to do more harm, if he be so disposed, he must not only take the Oath by the former branch, but he must become bound by this branch with two sureties, &c. The form of the Obligation is set down in this Act. The exposition of the former branch giveth light to the understanding of the residue of this Clause.

There is a Proviso, that no attainder of Felony, made Felony by this Act, shall take away dower, nor make, or work, any corruption of blood, or disinheritance to the heir. The offenders in any of the said cases of Felony may have the benefit of their Clergy.



## C A P. XXIV.

## Of Felony in Purveyors.

See in the fourth part of the Institutes, cap. Chan-  
cery. Articles against Cardinal Woolsey. Artic.  
33, 35, 36.  
a Artic. sup. Cart.  
cap. 2.  
18 E. 2. cap. ult.  
5 E. 3. cap. 4.  
b 5 E. 3. cap. 2.  
25 E. 3. cap. 1.  
c 25 E. 3. cap. 15.  
d 25 E. 3. cap. 2.  
Vid. Stanf. Pl.  
Cor. 37. b.

e 27 H. 8. cap. 24.

f Trin. 40 Eliz.  
coram Rege. In a  
Quo Warrant. the  
Lord Darcies case.

Rot. Parl. Anno  
28 E. 3. nu. 34.

At a Parliament  
holden 4 Jacobi  
Regis.

Salt-peter, *quasi*  
Salis petrae, colli-  
gitur aut ex mate-  
ria quam veteres  
muri, rupes, &  
saxa exsulant, aut  
ex terra falsuginosa  
& puta, quae in  
stabilis animalium  
urinam ad multos  
annos excipit,  
Latine Nitrum.

See the Statutes of Artic. super Cartas, anno 28 E. 1. cap. 2. 18 E. 2. cap. ult. 5 E. 3. cap. 2. 25 E. 3. cap. 1. & 15. 27 E. 3. cap. 1. 36 E. 3. cap. 2. And befoze in the Second part of the Institutes, in the exposition of the Statute of Artic. super Chartas, cap. 2. you shall find in what case a Purveyor may be charged with Felony, which briefly may be reduced to these four heads. First, if a any that take upon him to be a Purveyor, or his deputy or servant make purveyance of any thing above twelve pence without Warrant. Secondly, b or make purveyance of any thing above twelve pence without testimony and appoysement of the Constable, and four honest men, and without delivery of Tales. Thirdly, c or take any shap with their wools between Easter and Midsummer, and carry them to his own house and shear them. Fourthly, d or make any takings or buyings, or take any carriage in other manner then is contained in their Commissions, they shall have punishment of life and member: and this Act remains still in force without alteration. The offenders may have the benefit of their Clergy.

e By this Statute it is enacted, that Purveyors assigned by Commission shall make purveyance of victuals, corn, and other things, as well within Liberties and Franchises, as without, any grant, allowance, or other thing to the contrary, or let thereof notwithstanding: but the Purveyors shall observe the Statutes for them provided in every behalf, as by that Act appeareth. f Upon this Act it was holden, that if the discharge of Purveyance were by Letters Patents, this Act makes it of no force: but if the discharge were by Statute, then the Purveyor is bound to observe the Statute, as by the Statute of 14 E. 3. cap. 1. pro Clero, Ecclesiastical persons are discharged by Statute, which the Purveyor is bound to observe. See the Statutes of 25 E. 3. Statut. 5. cap. 21. & 43 E. 3. cap. 3. in what manner and in what time the Kings Butler or his Lieutenant shall take Wines, &c.

See more of Purveyors in the fourth part of the Institutes Cap. of the Counting house or Green cloth.

See Lib. 8. fo. 45, 46. in Evans Case, a Commission for taking up of boys for the Kings Chappel, the general words well expounded.

By an Act of Parliament not in Print, it is enacted that no Purveyor arrested for any misdemeanour shall have any Privy Seal, to cause such as arrested him to come befoze the Council to answer to the King, but have his remedy by the Common Law.

Upon a grievous complaint made at the Parliament holden in the fourth year of our late Sovereign Lord King James, by the Commons of the Realm, concerning many grievances suffered by his Subjects in the execution of a Commission granted to certain persons for getting of Salt-peter, his Majesties answer (amongst other things) was, that he never had an intention to make any application of his Prerogative therein, further then might stand with the lawfull and necessary use thereof. And further his Majesty was pleased out of his gracious care and goodness to revoke and annul all Commissions, or grants made to any person or persons, for and concerning digging, and working of Salt-peter, intending to consider of such a course afterwards, as the same might be made without any just cause of complaint, as by the said royal answer (amongst other things) more at large appeareth. In pursuance whereof, by the said Kings commandment, Popham Chief Justice, and all the Justices of England, and Barons of the Exchequer, were assembled at Serjeants Inn in Fleet-street, in December, in the said fourth year, to resolve and certifie, what



what Privilege the King had for digging, and taking of Salt-peter in the houses, buildings, or grounds of his Subjects, that thereupon a new Commission might be made accordingly, who upon often conferences, and mature consideration resolved as followeth.

First, where it was objected, That Gunpowder was invented in Germany, within time of memory, in the reign of King E. 3. so as the King could not claim it by prescription: and that before the 31 year of the reign of Queen Eliz. (which was the year after the Spanish Invasion) we, as yet, find not any Commission or Licence granted by any King or Queen of this Realm to any for the digging or taking of Salt-peter: And in the said 31 year of the said late Queen, two Commissions or Licences were granted, the one particular, to George Constable Esq., to dig, open, and work during the space of eleven years for Salt-peter within the Counties of York, Nottingham, Lancaster, Northumberland, Cumberland, and the Bishoprick of Durham, as well within our own lands, grounds and possessions, as also within the lands, grounds, and possessions of any of our loving Subjects within the Counties aforesaid; and the consideration of the Grant was, that he should deliver a great quantity of powder to be made by the said George Constable, and provided for the Store of the Queens Majesty at a lower rate, then was paid for it before, with this further clause; [And further our will and pleasure is, that the said George Constable shall at his own proper costs and charges erect, make up, and lay all mud walls, stables, and grounds whatsoever so digged up;] whereupon it was inferred that no other buildings could be digged up by force of that Commission, but only stables. The other Commission was general, made unto George Evelyn, Richard Hils, and John Evelyn, and extended throughout the Realms of England and Ireland, and all other the Dominions of the same, as well within our own proper lands, grounds, and possessions, as also within the lands, grounds, and possessions of any of our Subjects, with the like clause of the erection and reparation, as is aforesaid, without naming of Mansion houses by express words, and without any prohibition to the Subject to dig for Salt-peter in their own buildings or grounds.

As to the first, it was resolved by all, That inasmuch as the taking of Salt-peter, was for the necessary defence, and safety of the Realm, that the King had a right of purveyance of it; and should not be driven to buy it in forrain parts, which forrain Princes might restrain, and so this Realm might want sufficient for the defence thereof, to the great peril, and hazard of the same: but the King was to take it, for the necessary defence of the Realm, according to the limitations hereafter expressed; and it is no prejudice to the owners of the soil, for the place that is digged must be made up again, and repaired in as good plight as it was before. Secondly, that this taking of Salt-peter in the buildings or grounds of the Subject, being a purveyance as is aforesaid, is an incident inseparable to the Crown, and cannot be granted, demised, or transferred to any other, but ought to be taken only by the Kings Ministers, as other purveyances ought, and cannot be converted to any other use, then for the defence and safety of the Realm, for which purpose only the Law doth give to the King this Privilege; And it is not like to a mine of gold or silver in the ground of the Subject, for there the King hath an interest in those metals, and not purveyance only. And if the powder which is so made by the Kings Ministers begin to decay, as it will do within two or three years, then this either ought to be changed for other, or sold, and the money thereof coming to be employed for powder for the defence of the Realm, and the Kings ministers ought to make great provisions of Salt-peter, for that will last a long time, and when

In the Accounts, &c. from the 21 of April 18 E. 3. for one year following Anno Domini 1344. under the title of Artificers and Workmen (inter alios) Gunners 6. And of their wages and stipends per diem, it is said (amongst others) Gunners six pence. *Latine* Bombardæ, Tormenta, Sclopi.

Pasch. 49 E. 3. Coram Rege Rot' 27. Oxon. Diversi malefactores venerunt ad Manerium, &c. cum Arcubus, Sagittis, Balistis & Goons.

Vide Rot. Parl. 1 R. 2. nu. 38. William Captain of the Castle of Catherrick, being charged for delivering it to the enemy, in the Reign of E. 3. without Commission, answered (inter alia) that the enemies brought to battery thereof nine pieces des grosses Cannons.

Hollingsh. fo. 453.

Walsing. 10 R. 2. 1366.

Pol. Virgil. De Invent' rerum. fo. 2. cap. 11.

Pancercollus Nova reperta; Tit. 18. pag. 679. Anno Domini 1378.

John Moore pag. 196. Anno Domini 1382.

Purveyance of Salt-peter. See the 1. part of the Institutes. Magna Charta cap. 21.



3. need is to make thereof gun-powder, which will be made before the Navy can be put in readyness, &c. Thirdly, the Ministers of the King cannot in digging for Salt-peter undermine, weaken or impair any of the walls or foundations of any of the houses of the Subject, be they Mansion houses or Out-houses, as Barns, Stables, Dove-houses, Mills, or the like, neither can they dig the floor of any Mansion house, which serves for the habitation of man, because his Mansion is the safest place of refuge, and safety of himself and his family, as well in sickness, as in health, and his defence as well in the night, as in the day, against felons, and misdoers; neither can the Kings ministers dig the floor of any Barn of the Subject employed for the safe keeping of Corn, Hay, &c. for the floor of a Barn cannot be made dry, or serviceable again in a long time, but they may dig in the floors of Stables, and Dre-houses, so that they leave sufficient room there for the horses, and other beasts of the owner, and so that they repair the same again in convenient time, as well as it was before. They may also dig in the floors of cellars, and vaults, so that the wine, beer, or other necessary provision of the owner be not removed, or in any sort impaired: And they may dig any mud wals, which be not the wals of any Mansion house, and in the ruins and decays of any houses which be not preserved for the necessary habitation of man.
4. Fourthly, they ought to make the places as well and commodious for the owner,
5. as they were before. Fifthly, they ought not to work in the possessions of the Subject, but between the rising of the Sun and the going down of the same, so as the owner may make fast the doors of his house, and put it in defence against misdoers. Sixthly, they ought not to place or fix any furnace, vessel or other necessities in any house or building of the Subject, without his consent, nor so near any mansion as he by it may receive any prejudice or disquiet. Seventhly, they ought not to continue in one place above a convenient time, nor return thither but after a long time. Lastly, that the owner of the soil cannot be restrained from digging, or taking of Salt-peter, for the property thereof is in the owner of the soil, and the King hath but the purveyance thereof, and that every man might work that would, and then there should be more plenty of powder, and at a cheaper rate. And these resolutions are agreeable with that Maxime, \* That the Common Law hath so admeasured the Privileges of the King, that they should neither take away nor prejudice the inheritance of any. And these Monopolies being Malum in se, and against the Common Laws, are consequently against the Privilege of the King, for \* the Privilege of the King is given to him by the Common Law, and is part of the Laws of the Realm. Which resolutions were delivered in writing by Popham Chief Justice unto the Kings Privy Council, as the unanimous resolution of all the Judges, and Barons of the Exchequer, and were by his Majesties Privy Council well allowed of, and approved, as Popham Chief Justice reported. Upon these resolutions these consequents do follow. First, if a man of his own Authority, or by colour of any Commission, Licence, or Grant, doth take upon him to take any Salt-peter in the buildings, or grounds of any other Subject to make thereof gunpowder, in any sort to his own use, albeit he covenanteth, or agreeth to serve the King of so many lasts of powder: yet seeing it is but a purveyance, he cannot sell any powder thereof made to any of the Kings Subjects, or make any private benefit thereof: and if he do, he may be indicted of digging, and taking of the Salt-peter at the Kings suit, and be grievously fined and imprisoned, for that it is a grand trespass with an high hand. Secondly, the party grieved may have his Action of trespass, and recover damages for the trespass, &c. according to the quality of the trespass.

\* Pl. Com. 236.

\* Stanf. Pl. Cor.  
162. a.  
Stanf. Prer. 5. b.

a Rot. Parl.  
4 H.4. nu. 111.  
Eodem Anno 81.  
9 H.4. 15.  
b Rot. Parl. Anno  
9 R.2. nu. 31. not  
in print.

a Complaints made against Purveyors in Parliament.

b By the statute of 9 R.2. all statutes made concerning purveyors be confirmed, and to be put in execution, and that Justices of Peace have power to hear and determine their offences. See the Fourth part of the Institutes, cap. 8. Art. 33. 35, 36. against Cardinal Woolsey.



## CAP. XXV.

## Of Felony in wandring Soldiers and Mariners.

1. **A**LL idle and wandring Soldiers or Mariners, or idle persons wandring as Soldiers or Mariners, shall be reputed felons, and suffer as in case of felony. 39 El. cap. 17.

So as not only he that is a Soldier, or Mariner indeed, but he that is an idle wanderer, and takes upon him to be a Soldier or Mariner, though in troth he be none, is in danger of this Law; for, as the Preamble saith, they abuse the name of that honorable profession.

2. Every idle, and wandring Soldier or Mariner, which coming from his Captain from the Seas, or from beyond the Seas, that shall not have a testimonial under the hand of some one Justice of Peace, of or near the place where he landed, setting down therein the time and place when, and where he landed, and the place of his dwelling and birth, unto which he is to pass, and a convenient time therein limited for his passage, is by this Act adjudged a Felon.

3. Or if he hath such a testimonial, and shall exceed the time therein limited above fourteen days, he is by this Act a felon, unless he fall sick by the way, so as after his recovery he seeketh himself in some lawful course of life, or resort to the place where he was born, or was last abiding: but in both these two cases he must be a Soldier or Mariner indeed.

4. If any such idle and wandring Soldier or Mariner, or other idle person wandring as Soldier or Mariner, shall forge or counterfeit such testimonial, he is by this Act a Felon.

5. Or if he shall have with him or them any such testimonial forged or counterfeit, knowing the same to be counterfeit or forged, he is also by this Act a felon. And in both these last cases, as well he that is a Soldier or Mariner indeed, as he that is none, is in danger of this Act.

And the offender against any of the Articles of this Statute shall not have the benefit of his Clergy.

Justices of Assize, Justices of Gaol delivery, and Justices of Peace, have power by this Act to hear and determine the said felonies.

But if some honest person valued in the last Subsidy to ten pounds in goods, or Forty shillings in lands, or some honest freeholder, as by the said Justices shall be allowed, will be contented before such Justices to take him or them into his service for one whole year, and will become bound by recognizance, as the Statute doth appoint, then they shall not proceed any further against him, unless such person retained depart within the year, without the licence of him, that so retained him; and then he is to be indicted, tried, and judged as a felon, and not to have the benefit of his Clergy.



## C A P. XXVI.

## Of Felony in Soldiers that depart from their Captains without licence.

18 H. 6. cap. 19.  
5 Eliz. cap. 5.  
extendeth it to  
Mariners and  
Gunners.

\* By the statute of  
5 R. 2. cap. 11.

See the Writ in  
the Register 151.  
directed to the  
Serjeant at armes.

5 R. 2. cap. 10.  
Rot. Parl. 5 H. 4.  
nu. 29. the like for  
keeping of Castles  
and Forts.

Rot. Parl. 5 H. 4.  
nu. 24, 25.

2 E. 6. cap. 2.  
renued 4 & 5 Ph.  
& Mar. cap. 3.  
1 Jac. cap. 25.

7 H. 7. cap. 1.  
3 H. 8. cap. 5.

Lib. 6. fo. 27. Case  
de Soldiers.  
Dier 4 Eliz. 211.

**T**his Statute is become of little force or use: for the ancient manner of retainer of Soldiers whereunto that Act referreth, is utterly altered: for then Knights or Gentlemen expert in war, and of great revenues and livelihood in their Countrey, covenanted with the King to serve him in his war for such a time with such a number of men: and the Soldiers made their covenant with their Leaders or Masters, and then they were mustered before the Kings Commissioners, and entred of Record before them; and that was certified in to the \* Exchequer; and thereupon they took their wages of the King, as it appeareth by many presidents of the Exchequer, and may be gathered by the preamble and body of the Act, and by the Register, where it appeareth, that a Writ was framed upon that Statute directed to a Serjeant at Arms ad capiend' conductos ad proficiscend' in obsequium &c. And this was thought an excellent Military policy, that the Soldiers, (part whereof were of their own tenants) should be chosen and led by Knights and Gentlemen of quality of their own Country, with whom they must fight in war, and live withal in peace, when they returned into their Country, in respect whereof the Soldier would the more chearfully and obediently follow his Leader, and the Leader would the more respectfully and lovingly use his Soldier when he is abroad. See the ancient form of Commissions for arraying and mustering of men in 5 H. 4.

By this Act the benefit of Clergy was not taken away from the Delinquent.

The Statute of 2 E. 6. cap. 2. extendeth only when the Soldier departs after that he hath served the King in his war: And such an offender shall not enjoy the benefit of his Clergy.

If any Soldier being no Captain, immediately retained with the King, which shall be in wages and retained, or take any prest to serve the King upon the Sea, or upon the Land beyond the Sea, depart out of the Kings service without licence of his Captain, that such departing be taken, deemed, and adjudged felony. And that all the Justices in every Shire of *England*, where any such offenders be taken, have power to enquire of the said offences, and the same to hear, and determine, as they do and may do of felony, &c. expressed in the Kings Commission to them made, as though the same offences were done in the same Shire; and also that the departing of such Souldiers, and also their retainers, if it be traversed, be tried in the same Shire, where they be for such a cause arrested, and arraigned.

Both these Acts of 7 H. 7. and 3 H. 8. are perpetual Acts, for this word [King] includeth all his succession.

Without licence of his Captain. ] The Statute of 3 H. 8. is without licence of the Kings Lieutenant there.

That all the Justices in every shire of *England*, where any such offenders be taken, &c. ] This Act of 7 H. 7. extends to all the Kings Justices in every Shire, viz. Justices of Assise, Gaol Delivery, Dier and Terminer, and of the Peace. And if the offender be taken in the County where



where the Kings Bench set, he may be indicted, &c. there: but this clause in 3 H. 8. is restrained to Justices of Peace. This clause in both the said Statutes is cumulative, and for more speedy proceeding with the offender. But admit the offender be never taken, yet may he be indicted of felony in the County where the departure was, and if he appear not, he may be outlawed, for by the first clause, the offence is made felony, and the second clause is affirmative, and not privative. See Stanf. pl. cor. fol. 168. c.

[He or they so offending shall not enjoy the benefit of his Clergy.] This branch in the Act of 7 H. 7. is general, but in the Act of 3 H. 8. there is an exception out of the like branch, viz. of men being within orders of holy Church. So as it differeth much, whether he be indicted upon the one Statute, or the other.

But observe what punishment the ancient Law of England inflicted upon the Soldier that departed from the Kings Host, both before, and since the Conquest. Item qui fugiet à Domino, vel socio suo pro timiditate belli, vel mortis, in conductione Heretochii sui in expeditione navali, vel terrestri, perdat omne quod suum est, & suam ipsius vitam, & manus mittat Dominus ad terram quam ei antea dederat. For the exposition of Heterochius and Herellite, see the Fourth part of the Institutes, cap. Court de Chivalry.

Lamb. Inter Leges  
Edovardi fol. 136.  
Hoven. Annal. 35.  
Pœna Herellitæ.

Now concerning Armour, Arms, Charges of Soldiers, mustering of them, &c. See the Statutes in print of Confirmat. Cart. 25 E. 1. Vet. Magna Cart. 2. parte, fol. 35. 1 E. 3. cap. 5. 18 E. 3. cap. 7. 25 E. 3. cap. 8. 4 H. 4. cap. 13. 11 H. 7. cap. 7. and 3 H. 8. cap. 5. and 4 & 5 Ph. & Mar. cap. 3. for appearing at musters, &c. But 4 & 5 Ph. & Mar. cap. 2. an Act for having of Horse, Armour, and weapon is repealed by the Statute of 1 Jac. cap. 25.

An Act not in print, Rot. Parl. Anno 5 H. 4. nu. 24, 25. for arraying and mustering of men, for watching of Beacons, &c.

Records of Parliament, 4 H. 4. nu. 48. 7 H. 4. nu. 124. 1 H. 5. nu. 17.

Book cases, 48 E. 3. 3, 4. 21 E. 4. 17. per Catesby, 9 E. 4. 26. lib. 7. fol. 7. 8.

See the Second part of the Institutes, Confirmat. Cart. cap. 5. ubi supra.

Vide Pasch. 16 E. 2. Phelip Master del Hospit. de S. Katherins case, in libro meo fol. 83. b.



## CAP. XXVII.

Of Felony to marry a second husband or wife,  
the former husband or wife living.

1 Jac. cap. 11.

**I**F any person or persons within his Majesties Dominions of *England* and *Wales*, being married do at any time after marry any person or persons, the former husband or wife being alive, that then every such offence shall be felony, &c.

This is the first Act of Parliament that was made against Polygamy. Polygamia est plurium simul virorum, uxorumve connubium.

The difference between Bigamy, or Trigamy, &c. and Polygamy is. Quia Bigamus seu Trigamus, &c. est qui diversis temporibus, & successive duas, sua tres, &c. uxores habuit. Polygamus, qui duas vel plures simul duxit uxores.

[ If any person. ] This Law is general, and extendeth to all persons, of what estate, or degree soever.

See the 1. part  
of the Institutes  
Sect. 104.

If the man be above the age of fourteen, which is his age of consent, and the woman above the age of twelve, which is her age of consent, though they be within the age of one and twenty, are within the danger of this Law: which appeareth by this, that this Act extendeth not to a former marriage made within the age of consent, as hereafter shall appear.

[ Being married, &c. ] This extendeth to a marriage de facto, or voidable by reason of a precontract, or of consanguinity, or of affinity, or the like: for it is a marriage in judgment of Law until it be avoided, and therefore though neither marriage be de jure, yet they are within this Statute.

[ Do at any time marry. ] This second marriage is merely void, and yet it maketh the offender a felon.

And the party and parties so offending, shall receive such and the like proceeding, trial, and execution in such County, where such person or persons shall be apprehended, as if the offence had been committed in such County, where such person or persons shall be taken or apprehended.

See before the exposition of the Statutes of 7 H. 7. and 3 H. 8. concerning departing of Soldiers, &c.

See 22 E. 4. Con-  
sultation. 5. The  
opinion of the  
Doctors.  
Pains case, lib. 9.  
fol. 72.

Out of the generality of this Law, there be five exceptions: First, it extendeth not to any person or persons, whose husband or wife be continually remaining beyond the Seas, by the space of seven years together. By this branch notice is not material, in respect of the Commorancy beyond Sea.

Secondly, it extends not, when the husband or wife shall absent him or her self, the one from the other, by the space of seven years in any parts within his Majesties Dominions, the one of them not knowing the other to be living within that time. Here notice is material, in respect the Commorance is within the Realm.

Thirdly,



Thirdly, noꝛ to any person oꝛ persons, that at the time of such marriage be divorced by any sentence had in the Ecclesiastical Court.

There be two kinds of divorces, the one that dissolveth the marriage à vinculo matrimonii; as foꝛ pꝛecontract, consanguinity, &c. and the other à mensa & thoro; as foꝛ adultery, because that divorce by reason of adultery, cannot dissolve the marriage à vinculo matrimonii, foꝛ that the offence is after the just and lawful marriage. This branch in respect of the generality of the words, priviledge the offender from being a felon, as well in the case of the divorce à mensa & thoro, as where it is à vinculo matrimonii, and yet in the case of the divorce à mensa & thoro, the second marriage is void, living the former wife oꝛ husband. And if there be a divorce à vinculo matrimonii, and the adverse party appeal, which is a continuance of the former marriage, and suspend the sentence, yet after such a divorce, the party marrying is no felon within this Statute, in respect of the generality of this branch, although the marriage be not lawful.

Fourthly, noꝛ to any person oꝛ persons, where the former marriage is by sentence in the Ecclesiastical Court declared to be void and of no effect.

Fifthly, noꝛ to any person oꝛ persons, foꝛ oꝛ by reason of any former marriage made within age of consent: Whereby it appeareth that the Makers of the Law intended that this Act should extend to every person above the age of consent.

If the man be above fourteen, and the wife under twelve, oꝛ if the wife be above twelve, and the man under fourteen, yet may the husband oꝛ wife so above the age of consent, disagree to the espousals, as well as the party that is under the age of consent; foꝛ the advantage of disagreement must be reciprocal. And so it was resolved by the Judges and Civilians, Trin. 42 Eliz. in the Kings Bench, in a Writ of Error between Babington and Warner. So as if either party be within age of consent, it is no former marriage within this Act.

Trin. 42 Eliz.  
Coram reg.  
Inter Babington  
& Warner.

The offender against this Statute may have the benefit of his Clergy.

If he be a Nobleman and Lord of Parliament, he shall be tried by his Peers, albeit there be no provision special foꝛ it: foꝛ of common right, (that we may say it once foꝛ all) in case of treason, felony, and misprision of treason oꝛ of felony (as hath been said before) he is to be tried by his Peers.

I find that by the ancient Law of England, that if any Christian man did marry with a woman that was a Jew, oꝛ a Christian woman that married with a Jew, it was felony, and the party so offending should be burnt alive.

Marriage in some  
sort felony by the  
Common Law.

Contrahentes cum Judæis, Judæabus, Pecorantes, & Sodomitæ in terra vivi condiantur, &c. Fleta lib. 1. cap. 35. §. Contrahentes.



## CAP. XXVIII.

Of Felony for any having a Plague sore upon him, contrary to commandment goeth abroad, &c.

1 Jac. cap.31.

**I**F any person infected with the Plague, commanded (by such persons as are appointed by the Act) to keep house, shall contrary to such commandment wilfully and contemptuously go abroad, and shall converse in company, having any infectious sore upon him uncured, such person shall be adjudged a felon.

Levit. cap. 13.  
Numb cap. 5.  
Regist. F. N. B.  
234. Breve de Le-  
proso amovendo  
Bract. lib. 5. f. 421. a.  
Brit. fol. 39. 88.  
Fleta l. 6. cap. 39.  
22 E. 3. Rot.  
Clauſ. 2. parte  
cu. 14.

This is felony, albeit no other person by such means be infected, for this Statute was made to prevent the most horrid and fearful infection of the Plague. The Law was general, and extended to all estates and degrees whatsoever, and was grounded upon the Law of God: and the reason of the Law of the Realm is, that the infectious sick should be removed from the whole. The party offending might have had the benefit of his Clergy.

Here is a rare Proviso, That no attainder of felony by vertue of this Act, shall extend to any attainder, or corruption of blood, or forfeiture of Goods, Chattels, Lands, Tenements, or Hereditaments.

In this Proviso, these things are to be observed; First, That by the avoiding of the corruption of blood, the wives dower is impliedly saved; for where the heir shall inherit, the wife shall be endowed against the heir. Secondly, That there shall be \* no forfeiture of Goods, or Chattels, which is rare, and the like we have not observed before, and by consequent the offender may make his Will and Testament, and if he do not, the Ordinary ought to grant administration of the Goods and Chattels, as he ought to do in other cases.

These words [ to any attainder or ] must be omitted, and the sense to be, to any corruption of blood, for ( as it is printed ) it is, that no attainder of felony shall extend to any attainder, &c.

This Act is become of no force for want of continuance, and is expired since we wrote this Chapter, therefore to be put out of the charge of the Judges of Peace.

\* Nota.



## CAP. XXIX.

## Of Felony in Jaylors by dures of Imprisonment, &amp;c. by Statute, and by the Common Law.

**I**F it happen that the Keeper of the Prison, or Under-keeper by too great dures of imprisonment, and by pain make any prisoner that he hath in his Ward to become an \* Appellor, against his will, and thereof be attainted, he shall have judgment of life and member.

14 E.3. cap.10.  
Geol in French is  
a prison Geolier  
a keeper of a pri-  
son Anglice, a  
Jayl, or Jaylor.  
\* An Approver.  
3 E.3. Cor.295.

Before the making of this Statute, if a Jaylor had by dures of imprisonment made his prisoner become an Approver, to appeal honest men for his own private, of intent to have of their goods, when they were committed to his custody, and to retain them in prison without being let to mainprise, and the Appelles upon his appeal be hanged: this is Felony in the Jaylor by the Common law: but if the appellees were acquitted, then it was no Felony, but a great misprison in the Jaylor, which was one of the causes of the making of this Act: for by this Act, if the prisoner become an Approver against his will, whether the Appelles be acquitted or attainted, or after the approvement not proceeded with, and whether the approvement be true or false, so it be by dures of imprisonment, and against the will of the prisoner, it is Felony. \* For it is not lawful for any man to excite or stir any other to a just accusation, complaint or lawful suit, for Culpa est se immiscere rei ad se non pertinenti; and so was it resolved Mich. 7 Ja. in the Star-chamber, in Sir John Hollis his case, by the whole Court) much more to do it by dures of imprisonment, most of all by a Jaylor, who hath the custody of the prisoner committed to him, to enforce him by dures to become an Approver. And therefore this Law hath made it Felony in the Jaylor or Under-jaylor.

18 E.3. Cor.272.

\* 1 E.3. cap.14.  
20 E.3. cap.5.  
1 R.2. cap 4.  
W.1. cap.36.  
11 H.4.291.  
22 E.3.15.  
See the exposition  
of W.1. c.28.  
a Mich. 7 Jacobi  
in Curia stellat.  
Sir John Hollis  
case.

[ Keeper of the prison, or Under-keeper. ] If he be keeper, or Under-keeper, de jure, or de facto, by right or by wrong, he is within the Purview of this Statute.

11 H.4.73. simile  
13 E.3. bar.253.  
simile.

[ By too great dures of imprisonment. ] Every imprisonment is taken and deemed in Law duritia; dures: a little addition to it by the Jaylor is too great dures in this case.

[ To become an Appellor. ] That is, an Approver.

[ Against his will. ] That is, when the prisoner never would have done it of his own will, if the Jaylor, or Under-jaylor had not enforced him thereunto.

\* W.2. cap.34.  
28 E.3. cap.3.  
13 R.2. Stat.2.  
cap.3.  
1 E.2. De frang.  
prisonam.  
9 E.4. fo.26.  
Br. Cor.203.  
b Britton fo.18.  
Fleta lib 1. c.26.  
Versus finem.  
Mirror cap.1. § 9.  
De homicidio.

[ Judgment of life or member. ] \* These words do imply Felony. For this offence, the offender shall have the benefit of his Clergy.

b If the Jaylor keep the prisoner more straitly then he ought of right, whereof the Prisoner dieth, this is Felony in the Jaylor by the Common Law. And this is the cause, (as before hath been said) that if a prisoner die in prison, the Coroner ought to sit upon him. See before Cap. Petit Treason fo.34. how prisoners are to be demeaned.

How



14 E.3. cap. 10.  
19 H.7. cap. 10.  
Lib. 4. fo. 34.  
Muttons case.  
Parl. 18 E.3.  
nu. 43. 2 Car. Regis in the Exchequer Chamber. Fortescues case.

How Gaols are rejoyned and united to the office of Sheriffs, see this Statute of 14 E.3. cap. 10. 19 H.7. cap. 10. Lib. 4. fo. 34. Muttons case. Add thereunto Rot. Parl. 18 E.3. nu. 43. and so was it decreed in Fortescues case, in the Exchequer chamber, Anno 2. Car. Regis.

## C A P. XXX.

## Of Felony by bringing in, payment, or receipt of certain money.

3 H.5. cap. 1.  
Stat. 1. Raft.  
Abb. Tit. money  
nu. 27.

**I**T is Felony to make, coyn, buy, or bring in, and put in payment, &c. any Galley half pence, Suskyn, or Dotkyn.

9 H.5. c. 6. Stat. 2.

The reason of this law was, for that these moneys were base, and not of the Allay of Sterling, which was (amongst others) the cause of the making of the general law of 9 H.5. cap. 6. Stat. 2.

2 H.6. cap. 9.

It is Felony to pay, or receive for payment any money called Blanks. For the better understanding of this Statute, it is to be known, that these Blanks were white money coined by King H.5. in France after his victory at Agin-court, and League with France, whose style then was, Rex Angliæ, Regens & hæres Franciæ. And they were called Blanks or Whites in respect of the colour, because at the same time he coined also a Salus in Gold, the Salus being of the value of twenty two shillings, was of the allay of sterling: but the Blanks, which were much more common, being each of them valued at eight pence, were not of the allay of sterling, and therefore they only were decreed by the said Act of 2 H. 6.

See the Second part of the Institutes. Artic. super Cartas cap. 20.

For either of these offences of Felony the offender may have his Clergy.

## C A P. XXXI.

## Of Felony for Transportation of Silver, or Importation of false or evil money, &amp;c.

Mirror c. 1. §. 3.  
Inter les Articles  
de viels Roys ordeins.  
Rot. Parl. 17 E. 3.  
nu. 15, not printed

**D**E fendue fuit que nul Argent ferra transport hors del' Realm.

This was the ancient Law of England long before the Conquest.

At the Parliament holden Anno 17 E.3. as well the transportation of silver, as the importation of false and evil money, is enacted by authority of that Parliament to be Felony. And also if the searchers mentioned in the Act be assenting to the bringing in of false money, or willingly suffering silver or money to be transported, it is also made Felony. But because this Act was never printed nor translated into English, and for that there be other things observable, enacted thereby, worthy to be known, we will transcribe the same, de verbo in verbum in proprio Idiomate.



Le Parliament tenu a Westm. a la Quinzeme de Pasch.  
du raign nostre Seignior le Roy Edward Tiers apres  
le Conquest Dys & septisme.

**I**tem accorde est de faire une Monoie des bones Esterlings en  
Engleterre du Pôis & del<sup>a</sup> Alay del auncient Esterling, que  
avera son cours en Engleterre entre les Grandz & la Comune  
de la terre, & la quele ne serra portes hors du roialme d'En-  
gleterre en nulle manere, ne pur quecunque cause que ceo soit.  
Et en case que les Flemings voillent faire bone monoie d'argent  
grosses ou autres accordant en alay es bones esterlings, que tiel  
monoie eit cours en Engleterre entre Merchand & Merchand  
& autres qui la vodroient resceuire de leur bone gree, issint que  
nul argent soit portes hors due Roialme.

Item est accordes & assentus, que bones gents & loialx soient  
assignes es Ports de miere, & ailours, ou miester serra, de faire la  
serche que nul argent soit portes hors due Roialme en monoie  
n'autrement, forspris que les Grandz quant ils vont per dela  
qils pensent aver vesseals d'argent pur servir leur hostels: Et  
que nul soit cy hardy<sup>b</sup> de porter fausse & malvois monoie en  
Roialme, sur paine de forfeiture de vie & de membre, & a faire  
eschanges a ceux qi passeront la miere d'or pur leur bones Ester-  
lings a la value.

Item assentus est et accordes, que les dits Sercheours, per cause  
qils ferront leur offices plus diliagement et plus loialment, <sup>c</sup> ils  
eient la tierce partie de tote la fausse monoie, qils purront trouver  
portee deins le Roialm a leur profit demeene: Et en mesme la ma-  
nere eient la tierce partie de la bone monoie quele ilz troveront  
en la miere passent hors de la terre. Et en case qils soient troves  
negligents ou rebealx a tieux serches faire, <sup>d</sup> que leur terres &  
tenements, biens et chateux soient seises en la main le Roy, et leur  
corps pris, et detenus tanque ils eient fait fine au Roy pur leur  
disobeissance. Et en case quils soient <sup>e</sup> assentants de porter tiels  
fausse monoie, et de suffrire sachantement l'argent ou monoie au-  
trement, ( forspris que les Grandz quant ilz vont per dela qils  
pensent aver vesseals d'argent pur servir leur hostels come de  
suis est dit ) estre mesmes hors du Roialm, eient judgement de  
vie & de membre.

<sup>a</sup> See Britton c. 5.  
fo. 1. b.  
Cest allay est fo-  
lonque le forine  
& usage del  
Realm.

Mirror cap. 1. §. 3.  
before the Con-  
quest.

& cap. 1. §. 6.

& cap. 5. §. 1.

See inter leges

Æthelstani c. 14.

Canuti cap. 8.

Fleta lib. 1. c. 22.

Glanv. li. 14. c. 7.

Of what weight  
and allay the Kings  
money shall be.

25 E. 3. ca. 13.

9 H. 5. ca. 11.

See before cap.

Treason. Verb.

54 moneye.

See the second  
part of the Insti-  
tutes. Artic. super  
Cartas cap. 20.

<sup>b</sup> This is felony.  
See the like in the  
second part of the  
Institutes.

1 E. 2. De frangen-  
tibus prisonam.

14 E. 3. 10. &c.

<sup>c</sup> The reward of  
the Searchers if  
they be diligent,  
&c.

<sup>d</sup> The punishment  
of them if they be  
negligent, &c.

<sup>e</sup> Their assent to  
the bringing in of  
false money, or  
wittingly to suffer  
silver, or money,  
&c. to be trans-  
ported, is felony.

Item,



*Item,* **I**T is accorded to make money of good Sterling in *England* of the Weight and Allay of the ancient Sterling, which shall be currant in *England* between the Great men and Commons of the Land, and the which shall not be carried out of the Realm of *England* in any manner, nor for any cause whatsoever. And in case that the Flemings will make good money of silver gross or other, according, in allay of good Sterling, that such money shall be currant in *England* between Merchant and Merchant, and others, who of their own accord will receive the same, so that no Silver be carried out of the Realm.

*Item,* It is accorded and assented, That good and lawful men be assigned in the Ports of the Sea, and elsewhere, where need shall be, to make search, that no Silver be carried out of the Realm in money or otherwise, ( except that the Great men may when they go out of the Realm, have silver vessels to serve their houses ) And that none be so hardy to bring false and ill money into the Realm upon pain of forfeiture of life and member, and to make exchanges with them that shall pass the Sea, of Gold for their good Sterling to the value.

*Item,* It is assented and accorded, that the said Searchers, because they may do their offices more diligently and more lawfully, shall have the third part of all the false money that they can find to be brought into the Realm for their own benefit ; And in the same manner they shall have the third part of the good money which they shall find upon the Sea passing out of the Realm. And in case they shall be found negligent or disobedient in making such searches, that their lands and tenements, goods and chattels shall be seised into the Kings hands, and their bodies taken and detained until they have made fine to the King for their disobedience. And in case they shall be assenting to the bringing in of such false money, or wittingly shall suffer Silver or money ( except vessels of Silver for the Great men when they go out of the Kingdom to serve in their houses, as before is said ) to be transported out of the Realm, they shall have Judgment of life and member.

The offenders in case of Felony made by this Act may have the benefit of their Clergy.



## CAP. XXXII.

Of Felony for carrying of Wool, Woolfels,  
Leather, or Lead out of the Realm.

**N**O Merchant, English, Welch, or Irish, shall carry any manner of Wools, Leather, Woolfels, or Lead, out of the said Realm and Lands, upon pain of forfeiture of life and member, nor shall transport any of the said wares or Merchandizes in the name of Merchant strangers, nor shall send or hold their servants, &c. in the parts beyond the Sea to survey the sale of the said wares or merchandizes, or to receive the money comming of the sale of the same, nor take payment of gold or silver, nor of any other thing in recompence or commutation, or in the name of payment in the parts beyond the Sea out of the Realm and Lands abovesaid of merchandizes sold in *England, Ireland, or Wales*, touching the Staple, but that all such payment shall be made in gold or silver, or merchandizes in *England, Ireland, or Wales*, where the contract was made, upon pain of life and member.

27 E. 3. cap. 3. the Statute of the Staple.

Mirror cap. 1. §. 3. Inter les artic. per vieles royes ordeins.

Defendu que nul ne amefnast leyne hors del realme.

That no Merchant privy nor stranger, nor any other, of what condition that he be, go by land or by water towards wines, or other wares or merchandizes coming into our said Realm or Lands, in the Sea, nor elsewhere, to forestal or buy the same, or in other manner to give earnest upon them, before that they come to the Staple, or to the Port where they shall be discharged; nor enter into the Ships for such cause, till the merchandizes be set to land to be sold, upon pain of loss of life and member.

Cap. 11.

No Merchant privy, stranger, or other, shall carry out of our Realm of *England*, Wools, Leather, or Woolfels, to *Barwick upon Twede*, nor elsewhere, nor into *Scotland* upon the like pain, nor that any Merchant, nor any other, sell his Wools, Woolfels, or Leather, to any of *Scotland*, nor to any other to carry into *Scotland*, upon the like pain.

Cap. 12.

If the Merchants or other people of *Ireland* or *Wales*, after they be in the Sea with their merchandizes, do pass to any place, other then to the Staples in *England*: it is felony.

Cap. 18.

No Merchant, or other, shall make any conspiracy, confederacy, &c. or ill device in any point, that may turn to the impeachment, disturbance, defeating, or decay of the Staples, &c. and if any do, and be thereof attainted before the Major and Ministers of the Staple, or other whom the King shall assign, he shall incur the pain of loss of life and member.

Cap. 25.

Item, *On auterfoitz fuit orden en lestatuts de Lestaple que nul Englois passera la mere ove leynes, quire, pealtz lanuts, ne per auter, sur peine de forfeiture de vie & member, terres & tenements biens & chatenx: Est accord que la forfeiture de vie & member soit onste de tout en lestatute de Lestaple,*

33 E. 3. cap. 6.  
27 E. 3. ca. 3, &c.  
stat. Scapula.



ple, & que nul home soit impeach per tiel forfeiture de vie & membre, ci-bien in temps passe come avenir, la forfeiture des terres & tenements, biens & chatenx estean en sa force. The same in English.

Also where heretofore it was ordained in the Statutes of the Staple, that no English man should pass the Sea with Wools, Leather, Woolfells, nor by other, upon pain of forfeiture of life and member, lands and tenements, goods and chattels. It is accorded that the forfeiture of life and member be ousted in the whole in the Statute of the Staple, and that no man be impeached by such forfeiture of life and member, as well in times past, as to come, the forfeiture of the lands and tenements, goods and chattels, being in his force.

By the express letter of the body of this Law, the forfeiture of life and member is ousted de tout in the Statute: therefore it is holden that the felony is taken away throughout the Statute, but the forfeiture of lands and goods remaineth by the express letter of this Act.

18 H.6. cap. 15.

Stanf. Pl. Cor. 37.b.

By the Statute of 18 H.6. No man shall carry Wool, or Woolfells, out of this Realm to other places, then to the Staple at Callice, without the Kings licence, upon pain of felony, &c. And that as well Commissioners assigned, as the Justices in every County where such Wools and Woolfells shall be so carried out, have power and authority to enquire of the premises, and them to hear and determine, &c.

But this Act extendeth not to wools which shall pass the strait of Marroke. And this is a perpetual Law, and cannot be expired, as it is supposed in the last impression of the Statutes at large, but it extendeth only to wools and Woolfells. The offender herein may have his Clergy.

And for the better understanding of ancient Statutes and Records concerning Wools, it is necessary to explain certain words and terms. By the Statute of 25 E.3. cap.9. A sack of wool contains but twenty six stone, and every stone fourteen pound, where before it was a twenty eight stone.

a Compos. de ponderibus vet. Mag. Carta, 2 part. fol. 31. Saccus lanæ. Rot. Parl. 27 E.3. nu. 53.

b Compos. de ponderibus, ubi supra.

Pochet of Wool, unde Pochettum, that is, a little poke or sack containing half a sack of Wool. Sarpler, unde Sarpleia, is also half a sack, and is derived from the French word Sarpillier, which signifieth a Wrapper, within which wrapper half a Sack is contained.

b A Weigh of Wool, unde Waga, is half a sack.

A Tod or Toit of Wool, unde Toddum lanæ, containeth two stone, and is derived from the French word Toilet, which is a Wrapper, within which by usage two stone of Wool is foulded: some fetch it from the Flemish word Dodderem, which signifieth neckere, to weave, because it is woven into cloth. Petralanæ is a Stone of Wool, so called, because the Weight, being a stone, contains fourteen pound.



## CAP. XXXIII.

Against transportation of Iron, Brass, Copper, Latten, Bell-metal, Pan-metal, Gun-metal, or Shroof-metal, (Tin and Lead only excepted.)

**T**HE transportation of these are prohibited by divers Acts of Parliament upon the penalties therein expressed. And hereby is prohibited the transportation of any Guns whatsoever: a necessary Law, and worthy of due execution.

And we have observed, That God hath blessed this Realm with things for the defence of the same, and maintenance of Trade and Traffick, that no other part of the Christian world hath the like, viz. Iron to make Guns, &c. more serviceable and perdurable then any other. Secondly, Timber for the making and repairing of our Navy, and especially for the knees of the Ships, better then any other. Thirdly, \* Our Fullers earth is better for the fulling of our cloth then any other. Fourthly, Our Wool makes better cloth, and more lasting and defensible against wind and weather, then the Wool in any Nation out of the Kings Dominions; and many other special gifts of God.

But here will we stay, and pray, that none of these may be transported for many inconveniencies that will follow thereupon.

28 E.3. cap. 5.  
33 H.8. cap. 7.  
2 E. 6. cap. 37.  
See the penalties in the Statutes themselves, which are thought to be too weak.  
Ferrū à feriendū.  
Timber is a Saxon word, in old French, Marem, unde Maremium. Latine, Ligni materia, vel Lignū edificatorium.  
\* Terra fullonica.

## CAP. XXXIV.

Of Felony for stealing of a Faulcon.

**E**VERY person that findeth any Falcon, Tercelet, Lanner, or Lanerret, or any other Falcon, that is lost of his Lords, that forthwith he shall bring it to the Sheriff of the County, and that the Sheriff make Proclamation, &c. and if any steal any Hawk and the same carry away not doing the Ordinance aforesaid, it shall be done of him as of a thief that stealeth a Horse or other thing.

The Statute of 34 E.3. inflicted the penalty for the concealing and taking away of the Hawk, two years imprisonment, and the price of the Hawk to the Lord, if he hath wherewith, and if not, he shall the longer abide in Prison. This Act of 37 E.3. maketh the offence Felony.

The new Printed book of the Statutes at large, in stead of these words, (or any other Falcon) hath, or any other Hawk.

I have seen some manuscripts (in these words) in the original tongue, where in the Statute was published. Que quecunque person que trove Faucon, Tercelet, Lanier, ou Lanyret, Aultor ou auter Faucon. And both these differ from the truth of this Law. For the first extendeth this Act to any Hawk whatsoever. And the manuscript to Aultor or Autor, a Goshawk, whereas in truth, this Law extendeth only to such as be of the kind of Faulcons, being long-winged Hawks, which many times by flying far off are lost, and not to any

31 E.3. cap. 19.

34 E.3. cap. 22.

Printed for the Society of Stationers, 1618.

See hereafter, cap. Larceny, verb. Personal goods, &c.



Lib. 8. f. 27, 28.  
In casu principis.

Short winged Hawk, as the Goshawk, the Tercel of the Goshawk, the Sparhawk, &c. And in the body of the Act this word [Faulcon] is ever used, and not this word [Hawk,] as hereafter appeareth. We would have been glad to have cleared this point by the Record of the Parliament Roll, but the Roll of this Act is not to be found, and yet being a general Law, the Judges are to take notice thereof: and that which I have set down as the words of the Law, agree with the first impression thereof, and with all succeeding impressions saving the last.

¶ Every person. ] This is a general Law, and extendeth to all persons of what degree or sex soever.

¶ That findeth. ] Note by the Common Law the felonious taking of any Hawk long-winged, or short-winged, from the Peack, &c. or from the person of any man, with a mind to steal her, is robbery: but the finding of a Faulcon, though he concealed, denied, or sold her, was no felony, but by this Act.

¶ Any Faulcon. ] By this and the last words, or any other Faulcon, it appeareth that only Faulcons are within this Law, as besides those that are here named, the Gerfaulcon, Girofalco, or Ardearius, and the Tercel, which is called a Jerkyn; and the Lanner is called Falcunculus. But the Herlyn, which is called Ahalo, and the Hobby, which is called Alaudaria, though they be long-winged Hawks, yet being not of the kind of Faulcons they are not within this Statute, neither is any short-winged Hawk, as the Goshawk, the Tercel of the Goshawk, or the Sparhawk, &c. as hath been said, within this Act.

¶ Tercelet. ] This is the Tercel of the Faulcon, called a Tercel gentil, the male of the Faulcon called Terciulus, quia tertia parte minor sit femella, because the Tercel is a third part less then the female.

¶ Lanner and Laneret. ] These (as hath been said) are of the kind of Faulcons, which appeareth not only by the name Falcunculus, but by the words of the Act, for having named the Lanner and Laneret, it is said, or any other Faulcon.

Albeit these Hawks, that shall be so lost, have no Uervels, yet must the finder carry them to the Sheriff, for Uervels are not required by this Act. The only thing that the finder is to do, to save himself from felony, is forthwith (the word in the original is *maintenant*) after his finding to carry the Hawk to the Sheriff.

¶ That is lost of his Lords. ] Lords are taken here for the owners, the word in the original is *Seignior*, which signifieth as well a Proprietary, as a Lord.

¶ To prove reasonably. ] This is not intended according to the general sense of this word [proof] that is, by a Jury of twelve men, but [reasonably,] that is, by Uervels, or by marks, or by other proof to the Sheriff.

¶ And if any steal any Hawk, &c. ] The concealing and carrying away of the Hawk, not bringing the same to the Sheriff according to this Ordinance, is adjudged a stealing by this Act. And yet if a man find goods, and conceal or deny them, it is no felony.

¶ As of a Thief that stealeth a Horse. ] But yet by the Common Law one hath not as good and absolute a property in Hawks, being *feræ natura*, and reclaimed for delight and pleasure; for they may become wild again, and return to their natural liberty) as in a Horse, or any other thing of profit: but the concealing and carrying away of the Hawk reclaimed, being found

10 E. 4. 1.  
7 R. 2. barre 241.  
Lib. 5. fol. 108.  
Sir Hen. Constables case.

14 El. Dier 307.  
Fines case.  
Lib. 7. fol. 17.  
In case de Swans.



found was no Felony before this Statute, no more then any thing of profit, because the party came to the Hawk by finding. See more hereof in the Chapter of Larceny. A Hawk that is not reclaimed is nullius in bonis, but occupanti conceditur, and he that first getteth the Hawk enjoyeth it.

In this Act four things are to be observed. First, That the Sheriff must make proclamation in all the good Towns of the County, that he hath such a Faulcon in keeping. Secondly, If none come to challenge the Faulcon within four months, if the finder be under the degree \* of a Gentleman (which here is called an simple home) the Sheriff shall have the Faulcon, paying reasonable costs, &c. Thirdly, If the finder be a Gentleman, and no challenge by the owner within four months, then he shall have the Faulcon, paying reasonable costs, &c. Fourthly, It is to be observed, that in these two latter branches, the last printed book hath this word [Hawk:] but in the original, and all the other printed books, the word is [Falcon:] under which word, all the rest mentioned in this Act are included.

For this offence of Felony the offender shall have the benefit of his Clergy, for at the time of the making of this Act he that had stoln a horse should have had his Clergy. See Stanf. Pl. Coron. fo. 37.

\* Who shall be accounted in Law a Gentleman;

See the second part of the Institutes, the Statute of Additions.

1 H. 5. c. 5.

See before c. 23.

3 Jac. ca. 4. Verb.

And that if any Gent.

## CAP. XXXV.

### Congregations, &c. by Masons in their general Chapters, &c.

IT is ordained and established that no congregations and confederacies shall be made by Masons in their general Chapters and Assemblies, whereby the good course and effects of the Statutes of Labourers are violated and broken, in subversion of Law; and if any be, they that cause such Chapters and Congregations to be assembled and holden, shall be adjudged Felons.

The cause wherefore this offence was made Felony, is, for that the good course and effect of the Statutes of Labourers were thereby violated and broken. Now all the Statutes concerning Labourers before this Act, and whereunto this Act doth refer, are repealed by the Statute of 5 Eliz. cap. 4. whereby the cause and end of the making of this Act is taken away, and consequently this Act is become of no force or effect: for cessante ratione legis, cessat ipsa lex. And the Indictment of Felony upon this Statute must contain, that those Chapters and Congregations were to the violating and breaking of the good course and effect of those Statutes of Labourers, which now cannot be so alledged, because those Statutes be repealed. Therefore this would be put out of the charge of Justices of Peace written by \* Master Lambard.

3 H. 6. ca. 1.

23 E. 3. De servientibus ca. 1. &c.

25 E. 3. De servientibus c. 1. &c.

5 El. cap. 4.

Cessante causa seu ratione legis cessat ipsa lex.

14 H. 7. 11.

Per Fineux simile

27 H. 8. 4. b.

Aide, simile 10 E. 3. 8. Account per Shard. 26 H. 6. Examination 14. \* Lambard pag. 227. Vide Stanf. 37. b.



## CAP. XXXVI.

## Of Felony by bringing in of Bulls of Excommunication, &amp;c.

13 R. 2. Stat. 2.  
cap. 3.

**I**F any man bring or send into this Realm, or the Kings power, any Summons, Sentence, or Excommunication against any person of what condition that he be, for the cause of making motion, assent, or execution of the Statute of Provisors, he shall be taken, arrested and put in prison, and forfeit all his Lands and Tenements, Goods and Chattels for ever, and incur the pain of life and member. And if any Prelate make execution of such Summons, Sentence, or Excommunication, that his Temporalties be taken, and abide in the Kings hand till due redress and correction be thereof made. And if any person of less estate than a Prelate, &c. make such execution, he shall be taken, arrested, and put in prison, and have imprisonment, and make fine and ransom at the discretion by the Kings Council.

Regist. fo. 61. b.

By the Common Law, when any person, either Ecclesiastical or Temporal, should by pretext of Forraign power impugne or attempt to frustrate any of the Laws of the Realm, there lieth a Writ called Ad jura Regia: if it were by an Ecclesiastical person beneficed within this Realm, then the Writ is,

Rex, &c. Salutem. Turbamus, nec immerito, & movemur dum illos qui sub nostro degunt dominio, & ibidem beneficiis & redditibus honorantur, quo prætextu in defensione, & tuitione jurium Regiæ Coronæ nostræ ipsos nos assilire concederet, eadem jura erectis contra nos cervicibus conspiciamus satagentes pro viribus impugnare, &c.

Ibidem 60. b.  
Ibid. 61. b. & 62.

The general Writ is, Rex, &c. Ad jura Coronæ nostræ integra & illæsa pro viribus conservanda, eo amplius curam & operam adhibere nos convenit studiosam, quod ad hoc ex debito astringimur vinculo juramenti, & alios conspiciamus, ad ipsorum jurium enervationem anhelare: and particularly against Provisions. So as Provisions, &c. were, as by these Writs it appeareth, against the Common Law of the Realm, but sufficient punishment was not thereby inflicted: therefore this, and other Statutes were made.

And here it is worthy of consideration, how the Laws of England are not derived from any forraign Law, either Canon, Civil, or other, but a special Law appropriated to this Kingdom, and most accommodate and apt for the good government thereof, under which it hath wonderfully flourished, when this law hath been put in due execution: and therefore as by situation, so by Law it is truly said,

Et penitus toto \* divisos orbe Britannos.

\* Divi- { orbe &  
sos { legibus.

**[** If any man. **]** Though these words be general, yet they extend not to Ecclesiastical persons, because there is special provision for them after in the Act.

**[** Any Summons, Sentence, or Excommunication. **]** Hereby are prohibited the Popes Bulls of any Sentence or Excommunication, &c. and proces of Summons.



It appeareth by our Books that the bringing of any Bull of Excommunication into the Realm against a subject, was against the Common Law of England, in respect it gave way to forraign authority. And so it was holden in the time of E.1. and E.3. &c. long before this Act, and ever since.

¶ Or execution of the said Statute of Provisors. ] Viz. 25 E. 3. de Provisoribus. See 25 E.3. cap. 22. 27 E.3. cap. 1. 38 E.3. Stat. 2. cap. 1. & 4.

¶ Incur the pain of life and member. ] *a* That is, of Felony, as hath been often said before. This punishment is altered by the Statute of 13 El. cap. 2. as hereafter in this Chapter shall appear.

¶ And if any Prelate make execution, &c. ] This and the next following branch extend to Ecclesiastical persons. The punishment in both these branches, and in the former also, is altered by the Statute of 13 Eliz. cap. 2. For thereby this offence is made High Treason, *b* as well in persons Ecclesiastical, as Temporal: which Act, and the cause of the making thereof, you may read in the case De jure Regis Ecclesiastico, ubi supra.

11 E.3. Certif. 6.  
30 Aff. p. 3.  
19 E.3. Quare non  
admisit. 7.  
Brook. Præmu-  
nire 10.  
11 H.4. 69. 76.  
14 H.4. 14.  
7 E.4. 14.  
20 H.6. 1.  
35 H.6. 42.  
F.N.B. 64. f.  
Lib. 5. fo. 12.  
in Caudries case.  
2 W.2. cap. 24.  
1 E.2. de Frang.  
prisonam.  
28 E.3. cap. 3.  
13 R.2. Stat. 2. c. 3.  
9 E.4. 26.  
Er. cor. 203.  
*b* Lib. 5. fo. 35, 36.  
&c. De jure  
Regis Ecclesi.

## C A P. XXXVII.

### Of Felony in receiving a Jesuite, Seminary Priest, &c.

EVERY person which shall wittingly and willingly receive, relieve, comfort, or maintain any Jesuite, Seminary Priest, or other Priest, Deacon, or Religious, or Ecclesiastical person (made by Authority from the See of Rome since the Feast of Saint John Baptist, An. 1 Eliz. born within this Realm) being at liberty and out of hold, knowing him to be a Jesuite, &c. shall for such offence be adjudged a Felon without benefit of Clergy.

The cause of the making of this Statute of 27 Eliz. against Jesuits and Seminary Priests, &c. and their receivers, you may read at large, Lib. 5. fo. 38, 39. in the case De jure Regis Ecclesiastico.

27 Eliz. cap. 2.  
Clergy taken  
away



## CAP. XXXVIII.

Of Felony in Recusants concerning  
Abjuration.

35 Eliz. cap. 1.

**I**F any Recusant (other then a Popish Recusant or a Feme Covert) which by the tenor and intent of this Act is to be abjured, shall refuse to make abjuration, or after such abjuration made shall not go to such haven, and within such time, as is by this Act appointed, and from thence depart out of the Realm, according to this present Act, or after his departure shall return into any of her Majesties Realms or Dominions, without her Majesties special licence in that behalf first obtained; that then every such person so offending, shall be adjudged a Felon.

If any offender against this Act before he or they be required to make abjuration, repair to some Parish Church, on some Sunday or Festival day, and then and there hear Divine Service, and make such submission as by the Act is prescribed; then the said offender is clearly to be discharged.

The offender shall forfeit his goods and chattels, and his lands during his life only, the offence shall work no loss of dower or corruption of blood, and the heir to inherit. The offender shall not have the benefit of his Clergy.

## CAP. XXXIX.

Of Felony in *Egyptians*, &c.1 & 2 Ph. & Mar.  
cap. 4.  
5 Eliz. cap. 20.

**I**F any outlandish people, calling themselves, or being called *Egyptians*, shall remain in this Realm, or in *Wales*, one month, at one or several times: and if any person being fourteen years old, which hath been seen or found in the fellowship of such *Egyptians*, or which hath disguised him or her self like to them, shall remain here or in *Wales* by the space of one month, either at one or several times, it is Felony.

The offender shall not have the benefit of his Clergy.

CAP.



## CAP. XL.

## Of Felony in dangerous Rogues.

**I**F any dangerous Rogue that was banished the Realm or adjudged perpetually to the Gallies, have returned into the Realm without lawful licence or warrant, it is felony: the felony to be tried where the offender is apprehended.

The offender may have the benefit of his Clergy.

If any Rogue after he hath been branded in open Sessions with a Roman R. upon the left shoulder, or sent to the place of his dwelling where he last dwelt by the space of a year, or the place of his birth, to be placed in labour, have offended again in begging, or wandring contrary to the said Statutes, it is felony, to be tried in the County where the offender shall be taken.

The offender against this branch shall not have the benefit of his Clergy.

Mendicus non erit inter vos, There shall be no beggar among you.

Ordeine fuit que les povres fuissent susteinus per les Parsons, Rectors, & les Parochians, cy que nul ne morust per default de sustenance.

See an ancient Ordinance in 50 E. 3. concerning Ribauds and sturdy Beggars, that be driven to their occupations or services, or to the place from whence they came.

39 Eliz. cap. 4.  
1 Jac. cap. 7.

39 Eliz. cap. 4.  
1 Jac. cap. 7.

Deut. ca. 15. v. 4.  
Mitt. cap. 1. §. 3.  
Inter les Art per  
viels Roys ordeins  
Rot. Par. 50 E. 3.  
nu. 61.  
Brit. 49. b.

## CAP. XLI.

## Of Felony by Forgery in the second Degree.

**I**F any person or persons being once condemned of any of the Forgeries mentioned in the Act, shall after such his or their condemnation, eschewes commit or perpetrate any of the said offences in form in the said Act mentioned, that then every such second offence shall be adjudged Felony. But no attainder of this Felony shall extend to take away dower, nor to corruption of blood, or disinherison of the heir.

In 43 Eliz. Markham was attainted of Felony upon this branch in the Kings Bench for a second forgery of many of the Mannors and Lands late of Sir Thomas Gresham Knight, and was executed therefore.

\* This Felony is to be heard and determined before Justices of Oier and Terminer, and Justices of Assize in their Circuit. And albeit that Justices of Peace have power to hear and determine felonies, trespasss, &c. yet are they not included under the name of Justices of Oier and Terminer: for Justices of Oier and Terminer are known by one distinct name, and Justices of Peace by another. But the Justices of the Kings Bench are Justices of Oier and Terminer within this Statute.

The offender shall not have the benefit of his Clergy.

See hereafter in the exposition of this Statute for the first offence, where incidently there shall be more said concerning the second offence.

5 Eliz. cap. 14.

Markhams case  
coram Rege.  
43 Eliz.

Hil. 30 Eliz. coram  
Rege.  
Lib. 9. fo. 118. b.  
Smiths case.  
3 Mar. Br. tit.  
Oier & Term. 8.



## CAP. XLII.

## Of Felony for conveying of any Sheep alive out of the Realm in a second degree.

8 El. cap. 3.  
See the Statute of  
3 H. 6. cap. 2.

His left hand cut  
off.

**N**O manner of person shall bring, deliver, send, receive, or take, or procure to be brought, delivered, sent, or received into any ship, or bottom, any Rams, Sheep or Lambs, or any other Sheep alive, to be carried and conveyed out of this Realm of *England, Wales, or Ireland*, or out of any of the Queens Dominions, upon pain that every such person, their aiders, abettors, procurers, and comforters, shall for his and their first offence, forfeit all his goods, and suffer imprisonment one whole year without bail or mainprise; and at the years end in some market town, in the fulness of the market, have his left hand cut off, &c. And that every person estoons offending against this Statute, shall be adjudged a Felon, &c.

But this Act shall not extend to any corruption of blood, or loss of Dower. This Felony is to be heard and determined before Justices of Oier and Terminer, Justices of Gaol-Delivery, and Justices of Peace. And the offender may have the benefit of his Clergy, as well in case of the cutting off his hand as in case of Felony. See Stanford 37. b.

## CAP. XLIII.

## Of Felony in Servants that imbecil their Masters Goods after their decease.

33 H. 6. cap. 1.

*a* This extends to the Lord Keeper of the Great Seal.  
*b* This extends to the Administrators, and also, if there be but one Executor or Administrator.

*c* Attainted by force of this Act of Parliament upon default.

See the like many times in the Parliament Rolls. Rot. Parl. 15 H. 6. nu. 14. & 15. Rot. Parl. 18 H. 6. num. 28.

**I**F any of the household servants of any person shall after the decease of their Lord or Master violently and riotously take and spoil the goods which were their said Lords or Masters, and the same distribute amongst them, that upon full Information *a* to the Chancellor of *England* for the time, being by the *b* Executors or two of them, of such riot, taking, or spoil made, the Chancellor by the advice of the Chief Justices, and Chief Baron, or two of them, shall have power to make so many and such writs to be directed to such Sheriffs, as to them shall seem necessary, to make open proclamation in such sort, as by the Act is prescribed, to appear in the Kings Bench, &c. and if any such writ be returned, &c. then if the said person or persons make default, then he or they making default shall be *c* attainted of Felony.

The offenders shall have the benefit of their Clergy.



## CAP. XLIV.

Of Felony in Servants that imbesil their Masters  
Goods committed to their trust above forty  
shillings.

**E**Very Servant to whom any Caskets, Jewels, Money, Goods, or Cattels of his or their Master or Mistris, shall be delivered to keep, that if any such servant or servants withdraw him or them from their said Masters or Mistresses, and go away with the said Caskets, Jewels, Money, Goods or Cattels, or any part thereof to the intent to steal the same, contrary to the trust and confidence in him or them put, &c. Or else being in service of his said Master or Mistris, without the assent and commandment of his Master or Mistris, imbesil the same or any part thereof, or otherwise convert the same to his own use, with like purpose to steal it: If the Caskets, Jewels, Money, Goods or Cattels be of the value of forty shillings or above, shall be deemed and adjudged Felony.

Concerning the value, (to speak it once for all) *Tantum bona valent, quantum vendi possunt.*

This Act extendeth not to any Apprentice or Apprentices, nor to any servant within the age of eighteen years, at the time of the offence committed.

Vide Dier 25 H. 8. fol. 5.

By the Statute of 27 H. 8. the offender was ousted of his Clergy, but that Act is repealed by 1 E. 6. cap. 12. So as at this day the offender may have the benefit of his Clergy.

Dier 25 H. 8. f. 5.

1 E. 6. ca. 12.

[ Shall be delivered by his or their Master or Mistris. ] If the Master deliver an obligation to his Servant to receive the money thereby due, and the Servant receive the money of the obligee, and goeth away with the same with intent to steal the same, this is no offence within this Statute, because he had not the money of the delivery of his Master: and if he had gone with the obligation with intent, *ut supra*, it had been also out of this Act, because it was a chose in action. So if the Master deliver to his Servant wares or merchandizes to sell, and selleth the same and goeth away with the money as before, this is no offence within this Statute for the cause aforesaid. See Stanford 37. b.

Dier 26 H. 8.

fo. 5. a. & b.

See the form of the Indictment upon this Stat.

Lamb. Inter Præfidentes.



## CAP. XLV.

Of Felony to cut down or break up the Powdike  
in *Marshland* in *Norff.*

22 H. 8. cap. 11.  
2 & 3 Ph. & Mar.  
cap. 19.

Every perverse and malicious cutting down and breaking up of any part of the new Dike called the Powdike in *Marshland* in the County of *Norff.* or of the broken Dike called Oldfield Dike by *Marshland* in the Isle of *Ely* in the County of *Cambridge*, or of any other Bank being parcel of the Rinde, and uttermost part of the said County, is adjudged Felony.

The Justices of Peace have power to enquire of, and to hear and determine this Felony. The offender may have the benefit of his Clergy.

Some say that this is a private Act, but it is publicum in privato, for the danger is publick, though the place be private, and both concern multitudes of people, and the Sea is such an immense creature, as who can withstand it without length of time, infinite damage and loss, and extream charge and cost?

43 El. cap. 13.  
\* See before cap.  
12. fo. 61, 62.  
3 H. 7. cap. 2.  
Vide 1 H. 5. c. 6.  
simile de Gales.  
\* Black mail is  
explained by the  
Act it self.

See the Statute of 43 El. cap. 13. whereby in the Counties of Cumberland, Northumberland, Westmerland, and the B. of Duresme \* carrying away or detaining of any person against his will, or imprisoning him or them to ransom them or to spoil them, upon deadly feud or otherwise, or shall receive or carry \* Black mail, or give Black mail for protection, &c. is made Felony without benefit of Clergy.

## CAP. XLVI.

Of one of the Grand Enquest being one of the  
Indictors of any person or persons of Treason or Felony, and discover openly what persons were so Indicted, &c.

Stanf. fo. 36.a.

This by some opinion in our books was holden for Treason, or Felony, and hereof divers reasons were yielded.

First, That such discovery was against his Oath, but that could not be the reason, for perjury was neither Treason nor Felony.

Secondly, Others did hold, that by this discovery the parties indicted of Treason or Felony might flee, or escape; but that can be no reason; for this discovery without more, can neither make him principal nor accessory.

18 E. 3. Cor. 272.  
27 Ass. p. 63.  
Georges case.

Thirdly, Others that endeavour to confess and avoid the Authorities in this case in Law, are of opinion, that in those times the intent of a man, in criminalibus, was much respected, in as much as In criminalibus voluntas reputabatur pro facto, and that by this open discovery, &c. his intent appeared, that they might flee or escape, And now it is agreed on all parts, that at this day



day such discovery is neither treason nor felony: and the rather, for that no person ever died for such discovery. In Georges case, in anno 27. lib. Ass. upon his Indictment he was acquitted. But certain it is, that such discovery is accompanied with perjury, and a great misprision to be punished by fine and imprisonment.

## CAP. XLVII.

## Of Larceny or Theft by the Common Law.

**H**AVING thus far proceeded, we are now come to Larceny, which cometh from Latrocinium, and from Latrocinie, by contraction, or rather abuse, to Larceny.

The Mirror first describeth Larceny, and then explaineth it. Larcine est prise d'autre meuble corporelle trecherousment contre la volunt de celuy a q il est p male egaigne de la possession, ou del use. Then doth he explain and shew the reason of the principal words thereof.

Mirror cap. 1.

§. 10. De Larceny.

Prise est dit, car baile nest my title de laroun, ne livery en le case.

Meuble corporelle est dit pur ceo q en biens nient meubles, ou nient corporels, si come de tre, rents, & des Advowsons de Esglises, ne se fait nul larcenie.

Trecherousment est dit pur ceo q si lesloignour entende les biens estre siens, & que il les poet bien prendre, en tiel case ne se fait my ceste peche, nec en case ou len prent l'autrui p la ou len entend, que il pleist al seignour des biens, que il les prendra, mes a ceo covient enseigner apparrant presumption & evidence.

Et sciendum, quod furtum est, secundum leges, contrafactio rei alienæ fraudulenta, cum animo furandi, invito illo domino, cujus res illa fuerat. And then he also explaineth it. Cum animo dico, quia sine animo furandi non committitur. Bracton useth not the word latrocinium, but furtum, and so doth Glanville. See Britton a whole Chapter de Larcyns. And Fleta hath it thus, Est autem furtum contrafactio rei alienæ fraudulenta, cum animo furandi, invito Dño cujus res illa fuerit, following Bracton totidem verbis. These descriptions are generally of Theft, comprehending Robbery, Burglary, when any thing is taken, and all other latrocinies. But here Larceny for distinction sake is taken in a narrower sense, viz. for single theft or thievery, and may be described thus.

Bracton lib. 3. fol. 150.

Glanv. lib. 7. c. 17. &amp; lib. 10. cap. 15. Britton cap. 15. de Larcyns, fol. 22. Fleta lib. 1. cap. 36.

Larceny, by the Common Law, is the felonious and fraudulent taking and carrying away by any man or woman, of the mæx personal goods of another, neither from the person, nor by night in the house of the owner.

Larceny defined.

Now let us peruse the principal parts of this description.

**[Felonious taking.]** First it must be felonious, id est, cum animo furandi, as hath been said. Actus non facit reum, nisi mens sit rea. And this intent to steal must be when it cometh to his hands or possessions; for if he hath the possession of it once lawfully, though he hath animum furandi afterward, and carrieth it away, it is no Larceny: but this receiveth some distinction, as hereafter shall appear.

See tit. Piracy, &amp;c. Butlers case, 28 Eliz.

Secondly, It must be an actual taking: for an Indictment, Quod felonice abduxit equum, is not good, because it wanteth cepit. By taking, and not bailment or delivery, for that is a receipt, and not a taking: and therewith agreeth Glanvil. Furtum non est ubi initium habet detentionis per dominum rei.

2 E. 3. 1.

Glanvil lib. 10. cap. 13.

13 E. 4. 9.

But herein the Law doth distinguish. For if a Bale or Pack of merchandize be delivered to one to carry to a certain place, & he goeth away with the whole pack, this is no felony: but if he open the pack, and take any thing out animo furandi, this is Larceny. Likewise if the Carrier carry it to the place appointed, and after take the whole pack animo furandi, this is Larceny also: for the deli-

very



very had taken his effect, and the privacy of the bailment is determined. And so it is of a Tun of Wine, or the like, mutatis mutandis.

Charge.

3 H. 7. 12.

21 H. 7. 15.

Also there is a diversity between a possession, and a charge; for when I deliver goods to a man, he hath the possession of the goods, and may have an Action of trespass, or an Appeal, if they be taken or stoln out of his possession. But my Butler or Cook, that in my house hath charge of my Vessel or Plate, hath no possession of them, nor shall have an Action of trespass, or an Appeal, as the Bailor shall: and therefore if they steal the plate or vessel, it is Larceny. And so it is of a Shepherd, for these things be In onere, & non in possessione Promi, Coci, Pastoris, &c.

13 E. 4. 9.

Special use.

If a Taverner set a piece of plate before a man to drink in it, and he carry it away, &c. this is Larceny: for it is no bailment, but a special use to a special purpose.

22 Aff. pl. 99.

22 E. 3. cor. 265.

Thirdly, For by Trover or finding. If one lose his goods, and another find them, though he convert them, animo furandi, to his own use, yet is it no Larceny, for the first taking is lawful. So if one find treasure trove, or waif, or stray, and convert them ut supra, it is no Larceny, both in respect of the finding, and also for that Dominus rerum non apparet.

See cap. de Treson. Verb. quant home, &c.

Et cap. Murder.

27 Aff. 40.

2 E. 3. cor. 160.

Lex Inæ cap. 50.

accord.

Stranf. 26. c.

15 E. 2. Cor. 383.

¶ Felonious ] implicth, that though the taking be actual, yet must it be done by such persons as may commit felony. A mad man that is non compos mentis, or an infant that is under the age of discretion, cannot commit Larceny, as in another place we have said,

A Feme covert committeth not Larceny, if it be done by the coercion of her husband; But a Feme covert may commit Larceny, if she doth it without the coercion of her husband: and there it appeareth, that a man may be accessory to his wife, but the wife cannot be accessory to her husband, though she know that he committed Larceny, and relieve him, and discover it not: for by the Law Divine, she is not bound to discover the offence of her husband.

Mic. 37 E. 3. coram Rege, Rot. 83. Lincoln.

Felons came to the house of Richard Dey, and Margery his wife; the wife knew them to be felons, but the husband did not, and both of them received them, and entertained them, but the wife consented not to the felony. And it was adjudged, that this made not the wife accessory, Quia ipsa in vita mariti sui de aliquo receptamento in præsentia viri sui, cui contradicere non potuit, occasionari non debet.

Brañon lib. 3. fol. 151. b.

Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec detegere furtum suum, nec feloniam, cum ipsa sui potestatem non habet, sed vir.

Britton cap. 24. fol. 47.

La feme nequedent al felon poit dire q̄ tout scavoit ele del mauvaſte son baron, pur ceo ne le poet ele my encuser, ne devoit, tant come ele fuit de luy covert, &c.

Fleta lib. 1. cap. 36.

Uxor autem furis non teneatur pro delicto viri, poena enim suos debet tenere auctores, uxor autem virum accusare non debet, nec felonie sue consentire, &c.

Pasch. 15 Eliz. Vide statutum.

¶ Felonious and fraudulent taking. ] If a man taking the Horse of B. in his pasture, and having a mind to steal him cometh to the Sheriff, and pretending the Horse to be his, obtaineth the Horse to be delivered unto him by a Replevin, yet this is a felonious and fraudulent taking, as it was resolved by the Judges, as Catlin Chief Justice reported in the Kings Bench, Pasch. 15 Eliz. for the Replevin was obtained in fraudem legis.

22 Aff. pl. 39.

¶ Carrying away. ] For the Indictment saith, felonice cepit & asportavit. The removing of the things taken, though he carry not them quite away, satisfieth this word asportavit. As if a guest take the coverlet or sheets of his bed, and rising before day, take the coverlet or sheets out of the chamber, where he lay, into the Hall, to the intent to steal them, and went to the stable to fetch his Horse, and the Ostler apprehended him, and this was adjudged Larceny: and the coverlet or sheets were carried away being removed from the Chamber to the Hall, albeit they were still in the house of the owner.

So



So if a mans Horse be in his close, and one taketh him, and as he is carrying Justice Dalizons him away, he is apprehended, before he getteth out of the close, yet this is sufficient to make it Larceny. Justice Dalizons Report.

¶ Of meer personal goods. ] It is said [meer] for though they be personal goods, yet if they favor any thing of the realty, no Larceny can be committed of them: As any kind of corn or grain growing upon the ground is a personal chattel, and the Executors of the owner shall have them, though they be not severed, but yet no larceny can be committed of them, because they are annexed to the realty. So it is of grass standing on the ground, or of Apples, or any other fruits upon trees, or bushes, or of woods growing; but if the owner cut the grass, or gather the fruit, or cut the wood, then larceny may be committed of them.

12 E. 3. Cor 199.  
22 E. 3. Ibid. 256.  
lib. 4. 19.

So it is of a box or chest with Charters, no larceny can be committed of them, because the Charters concern the realty, and the box or chest though it be of great value, yet shall it be of the same nature the Charters be of: & omne majus dignum trahit ad se minus.

10 E. 4. 14. lib. 8.  
fol. 33. b.  
Caleys case.

No Larceny can be committed by taking, and carrying away of a ward, or of a villain, because they are in the realty.

It appeareth by all our ancient Authors ubi supra, and by the Statute of W. I. that there is Grand Larceny, and Petit Larceny, distinguished so by the value: for if the personal goods stolen amount to above the value of twelve pence, then is it Grand Larceny, and if it be under the value of twelve pence, then it is Petit Larceny, for which he shall forfeit all his goods, and suffer some corporal punishment, as whipping, &c.

W. I. c. 15. See the exposition thereof  
27 H. 8. 22.  
Coriū forisfacere  
or perdere Sax.  
Tholiz. his hide is  
to be whipt. Mir-  
ror c. 4. § De crime  
de robbery.

And this was the ancient Law before the Conquest, for the Mirror saith, Et tout soit que la Ley ne eyt regard forsque al ceures des peuchiers nequident linit le quantitie del robbery & larceny en cest manner, cestassavoir que nul ad judgment de la mort, si non larceny, &c. ne passent 12 deniers de sterlings.

A man hath a meer property in some things that are tame by nature, and yet in respect of the baseness of their nature, a man shall not commit any larceny, great or small, though he steal them, as of mastiffs, blood-hounds, or of other kind, dogs or of cats, nor of some things that be a wild by nature, and made tame, as bears, foxes, apes, monkeys, polecats, ferrets, and the like, and yet no manner of felony can be committed on them, in respect of their wild and savage nature, and therefore no person shall die for them: and likewise it is of their whelps, or calves, or young; for it is a rule in Law, that if no felony can be committed of any thing that is ferum natura, and of age being reclaimed, or made tame, that no felony can be of the young in the nest, kennel or den.

L. 7. f. 18. In case  
de Swans.

b So as a man may have property in many things, and yet in respect of their nature there can be no felony of them. On the other side, of some things that be feræ natura, being reclaimed, felony may be committed in respect of their noble and generous nature and courage, serving ob vitæ solatium of Princes, and of noble and generous persons, to make them fitter for great employments: As all kind of Faulcons, and other Hawks, if the party that steals them know they be reclaimed.

a Vide verb (of  
another) next fol-  
lowing. 12 H. 8. 39.  
14 H. 8. 34. 18 H.  
8. 2. 2 E. 2. distres  
20 leveret. 2 E. 2.  
Avowry. 182. ferret  
38 E. 3. 10. 47 E. 3.  
10. 5 H. 5. 1. 9 H. 6.  
2. F. N. B. 87. a. &  
88 l. 86 l.

b Mirror c. 1. §. 10.  
Dier 14 El. 306,  
307. 18 E. 4. 8.  
16 E. 4. 11. 14 H. 8.  
4. Vide before.  
37 E. 3. f. 37. F. N.  
B. 86 l.

¶ Of another. ] c No larceny can be committed of wild beasts, or of fowls that be wild, or of fishes that be at their natural liberty in rivers, or great waters, because these be nullius in bonis: but larceny may be committed of young pigeons in dovehouses, or of young hawks in the nest. But if any person upon the ground of any other, do take the eggs of any Faulcon, Goshawk, Lanner, or Swan out of the nest, this is not felony, d but he shall be imprisoned by the space of a year and a day, and fined at the Kings will, the one half to the King, and the other to the owner of the ground. But larceny may be committed of the eggs of such as be domitæ natura, as of Hens, Turkeys, Pheasants, and the like. e And larceny may be committed of fishes in a trunk or pond, because they are not at their natural liberty, but as it were beasts in a pound.

c 18 H. 8. 2. b. Doft.  
& Stu. 9 b. Britton  
74. 75. Braet. 1. 2.  
f. 9. 8 E. 4. 5.

d 11 H. 7. cap. 17.  
31 H. 8. cap. 12.  
e Stanf 25 c. 12 E.  
4. 4. 18 E. 4. 8.

22 H. 6. 55. 43 E. 3.  
24. Vid. before,  
Verb. (Of meer  
personal goods)  
3 H. 6. 55. lib. 5.  
f. 104. b. l. 7. f. 15, 17

a Ent



4 10 E. 4. 14.

*a* But if such as be wild, that serve for the food of man, be made tame, as Deer, wild Boar, Conies, Cranes, Pheasant, Partridge, or the like, Larceny may be committed of them, so as he that stealeth them know that they be tame. But the Deer, &c. being wild, yet when he is killed larceny may be committed of the flesh, and so of Pheasant, Partridge, or the like: And so note a diversity between such beasts as be feræ natura, and being made tame serve for pleasure only, and such as be made tame and serve for food, &c. which diversity being not observed, hath made many men to err.

7 E. 4. 14.  
Stanf. 25.

A man may be indicted, Quare bona Capellæ in custodia, &c. and so in time of vacation, bona domus Ecclesiæ.

10 Jac. Regis.  
Hains case.  
Furtum inauditū.

At the Assises at Leicester, in Lent, Anno 10 Jac. the case was this, one William Hain had in the night digged up the graves of divers several men, and of one woman, and took the winding sheets from the bodies, and buried the bodies again: and I advising hereupon for the rareness of the case, consulted with the Judges at Serjeants Inn in Fleetstreet; where we all resolved, that the property of the sheets was in the Executors, Administrators or other owner of them, for the dead body is not capable of any property, and the property of the sheets must be in some body: and according to this resolution, he was indicted of felony at the next Assises, but the Jury found it but petit larceny, for which he was whipped, as he well deserved.

Nota, A felonious taking must be of the possession, and not of the property removed from the possession.

7 H. 6. 43.

If a man doth bail, or lend his goods to another, although he hath the general property of them, yet may he commit larceny of them, by the felonious taking and carrying them away, and in judgment of Law he is said in this case to take the goods of another: for the bailer hath *jus proprietatis*, and the bailæ hath *jus possessionis*, or a special property.

21 H 6. Cor. 455.  
Abbride dall. 63:

The wife cannot steal the goods of her husband, for they be not the goods of another: for the husband and wife are one person in Law, *Dux animæ in carne una*. Vide Stanf. Pl. Coron. fol. 24, 25.

To speak it here once for all, if any person be indicted of treason, or of felony, or larceny, and plead not guilty, and thereupon a Jury is returned, and sworn, their verdict must be heard, and they cannot be discharged, neither can the Jurors in those cases give a privy verdict, but ought to give their verdict openly in Court.

Britton fol. 71.

Macegriefs, fleshmongers, such as buy and sell stolen flesh, knowing the same to be stolen. Vide Lamb. inter leges Edw. Regis fol. 140. b. De Machecariis derivèd of mace an old word for flesh, and grief, wrong or injury.



## CAP. XLVIII.

*De Anno Die & Vasto.*

## Of the year, day and wast.

**H**ereof we have treated at large in the second part of the Institutes in his proper place upon the exposition of Magna Carta cap.22. where it appeareth, that at this day the King shall have but the profits for a year and a day in lieu and satisfaction of the wast which the Common Law gave to the King in despite and detestation of the offence, as there you may read at large: and there it appeareth how necessary it is, ancient Authors to be read, all which need not here to be rehearsed; \* and that if any Statute be made to the contrary of Magna Charta, it shall be holden for none. And therefore if Prærogativa Regis anno 17 E. 2. cap. ultimo, be contrary thereunto, it is repealed as to the wast.

Mirror cap.1. §.3.  
& cap.4.  
S. Et le Roy in remembrance, &c.  
Lege quia optime.  
Glanv. li. 7. cap. 17.  
Bracton lib. 3. fo. 129, 137.  
Britton c. 5. f. 14.  
Fleta lib. 1. c. 28.  
§ Causa vero, &c.  
356. 327. 312. 290.

\* 42 E. 3. cap. 1. 17 E. 2. Prær. Regis cap. ultimo. Regist. 165. Mag. Chart. cap. 22. 3 E. 3. Cor.

## CAP. XLIX.

## Of Piracy, Felonies, Robberies, Murders, and Confederacies committed in or upon the Sea, &amp;c.

**H**aving now treated of Felonies, &c. that are committed and done upon the Land, we will consider of Piracies and Felonies, &c. done on the Sea, which by an Act of Parliament are to be enquired of, heard, and determined according to the course of the Common Law, as if they had been done upon the Land.

Rot. Parl.  
8 H. 6. nu. 42.

All Treasons, Felonies, Robberies, Murders and Confederacies committed in or upon the Sea, or in any other Haven, River, Creek, or place, where the Admiral hath, or pretends to have Power, Authority, or Jurisdiction, shall be enquired, tried, heard, determined, and judged in such Shires, and places in the Realm, as shall be limited by the Kings Commission under the Great Seal in like form and condition, as if any such offence had been committed upon the Land, to be directed to the Lord Admiral, or to his Lieutenant, Deputy, or Deputies, and to three or four such other substantial persons, as shall be named by the Lord Chancellor of England, for the time being, &c.

28 H. 8. ca. 15.

Vid. 27 E. 3. c. 13.  
del' staple.  
31 H. 6. ca. 4.  
Vide 2 R. 3. fo. 2.  
Vide Palacres case

And such as shall be convict of any such offence by verdict, confession, or proces by authority of any such Commission, shall have and suffer such pains of death, losses of Lands, Goods and Chattels, as if they had been attainted of any Treason, Felony, Robbery, or other the said offences done upon the Land.

See before in the chap. of Heresie.

The offenders not to be admitted to have the benefit of Clergy.

Q

The



See 40 Aff. pl. 25.

\* Concerning  
Treason, see be-  
fore cap. 2. Verb.  
*All trials.* fo. 25.  
1 E. 6. ca. 12.  
5 E. 6. ca. 11. &c.  
2 Rot. Par. 8 H. 6.  
nu. 42.

Hil. 2 Ja. Regis.  
at Serjeants-Inn  
in *Fleet-street*,  
the resolution of  
the Justices.

Three points re-  
solved.

Vide similia.  
19 E. 3. Cor. 124.  
8 H. 4. 2. 9 E. 4. 28.

\* See the Fourth  
part of the Insti-  
tutes cap. High  
Treason.  
5 El. cap. 5. Vide  
supra, cap. High  
Treason, Verbo,  
*On per aitors.* f. 11.

The mischief before this Statute was (as it appeareth by the Preamble) that Traitors, Pirates, Thiefs, Robbers, Murderers and Confederators upon the Sea many times escaped unpunished, because the Common Law of this Realm extended not to these offences, but were judged and determined before the Admiral, &c. after the course of the Civil Laws, the nature whereof is, that before any judgment of death be given against the offenders, either they must plainly confess their offences (which they never will do without torture or pains) or by \* witness indifferent, such as saw their offences committed, &c. which in these cases cannot be gotten but by chance, or very rarely: For this cause the Commons petitioned in a Parliament in 8 H. 6. that the Justices of Peace might enquire of all Piracies: but the Kings answer was, That he would be advised.

This Statute requires a considerate and just interpretation, wherein, for that it concerneth the life of man, the safest way is, to follow the resolutions of all the Judges formerly had upon due consideration of all the parts of this Act, and upon divers conferences, and in the end, when I was Attorney general, resolved by them unanimously as followeth:

Where divers did in the Reign of the late Queen Elizabeth commit Piracy and Robbery upon the high Sea, of divers Merchants of Venice, in amity with the said Queen, and after the Pirates, being not known, obtained a pardon, granted at the Coronation of King James, whereby the King pardoned them all Felonies (inter alia) First, That before this Statute, Piracy or Robbery on the high Sea was no Felony, whereof the Common Law took any knowledge, for that it could not be tried, being out of all Towns and Counties, but was only punishable by the Civil Law, as by the Preamble it appeareth; the attainder by which Law wrought no forfeiture of Lands, or corruption of blood. Secondly, That this Statute did not alter the offence, or make the offence Felony, but leaveth the offence as it was before this Act, viz. Felony only by the Civil Law, but giveth a mean of trial by the Common Law, and inflicteth such pains of death as if they had been attainted of any Felony, &c. done upon the Land. But yet (as hath been said) the offence is not altered, for in the Indictment upon this Statute, the offence must be alledged upon the Sea; so as this Act inflicteth punishment for that, which is a Felony by the Civil Law, and no Felony, whereof the Common Law taketh knowledge. Thirdly, Although the King may pardon this offence, yet being no Felony in the eye of the Law of the Realm, but only by the Civil Law, the pardon of all Felonies generally extendeth not to it, for this is a special offence, and ought to be especially mentioned.

Upon this resolution these consequents do follow. 1. That by the Attainder upon this Act, though there be forfeiture of lands and goods, yet there is no corruption of blood. 2. Seeing the offence is not made Felony by the Laws of this Realm, there can be no Accessory of any Felony by the Laws of the Realm in this case, either before or after the offence, because the Principal is no Felon by our Law, neither doth this Act speak of any Accessory. 3. If there be an Accessory upon the Sea to a Piracy, that Accessory may be punished by the Civil Law before the Lord Admiral, but cannot be punished by this Act, because it extendeth not to Accessories, nor makes the offence Felony. \* Lastly, The Statute of 35 H. 8. cap. 2. taketh not away this Statute for Treasons done upon the Sea for the cause aforesaid. Which resolution I have thought good to report, because it openeth the Windows of this Statute.

In Trin. 18 Eliz. in Lord Diers Manuscript, there is a Quære made, what offence it is to lodge and entertain upon the Land a Pirate, knowing him to be a Pirate, and whether this Accessory upon the Land shall be tried by this Statute, which is only of principals in Piracy. And it was thought by the two Chief Justices, that the surest way, was to have the Commission in the County where the Accessory offended, and there both the Principal and the Accessory may be indicted and tried, Ut per Statutum anno 5 & 6 E. 6. Quære.

Hæc



Hæc ille. So as this Quære is now cleared by the resolution of the Judges : and questionless the statute (intended of 2 & 3 E.6. for there is none such in 5 & 6 E.6.) extendeth only, when a Murder or Felony is committed in one County, and another person is accessory in another County (as hath been said before : ) but in that case the offence was committed upon the Sea, and not in any County, and so out of that statute : and therefore this part of the Manuscript of the Lord Dier was not thought fit to be printed.

Butler and other Pirates in Summer vacation robbed divers of her Majesties subjects, upon the Coast of Northfolk, upon the high Sea ; and brought divers of the goods so taken into the County of Northfolk, and there were apprehended with the goods : The question moved to Wray Chief Justice, and Justice Peryam, Justices of Assize in Northfolk, was, Whether they might be indicted of Felony in Northfolk, as if one steal goods in one County and carry them into another County, he may be indicted in either County : and it was resolved by them, that they could not be indicted for Felony in Northfolk, because the original taking was no Felony, whereof the Common Law took consufance, because it was done upon the Sea, out of the reach of the Common Law : and therefore not like the case, where one stealeth in one County and carrieth the goods into another, for there the original act was Felony whereof the Law took consufance.

But now let us peruse the words of the Statute.

¶ Where Traitors, Pirates. ] This word Pirat, in Latine Pirata, is derived from the Greek word *πειράτης*, which again is fetched from *πειράω*, a transeundo mare, of roving upon the Sea : and therefore in English a Pirat is called a Rover and a Robber upon the Sea.

¶ Treason, &c. ] Note, Treason done out of the Realm, is declared to be Treason by the Statute of 25 E.3. And yet at the making of this Act of 28 H.8. it wanted trial, (as by the preamble of this statute it is rehearsed) at the Common Law. And therefore to establish a certainty therein, the statute of 35 H.8. was made, as is aforesaid in the exposition of the Statute of 25 E.3. See Pasch.43 Eliz. lib.5.fo.107. Sir Henry Constables case.

Before the statute of 25 E.3. if a subject had committed Piracy upon another (for so is the book to be intended upon a fact done before 25 E.3. this was held to be petit Treason, for which he was to be drawn and hanged : because Pirata est hostis humani generis, and it was contra ligeancie sue debitum : but if an Alien, as one of the Normans, who had revolted in the reign of King John, had committed Piracy upon a subject, this offence could be no Treason, for though he were hostis humani generis, yet the crime was not contra ligeancie sue debitum, because the offender was no subject, but since the Statute of 25 E.3. this is no Treason in the case of a subject.

¶ Upon the Sea, or in any other Haven, River, Creek, or other place, where the Admiral hath, or pretends to have Power, Authority, or Jurisdiction. ] These words [ or pretends to have, &c. ] are thus to be understood between the High-water-mark, and the Low-water-mark : for though the Land be infra corpus comitatus, at the reflow ; yet when the Sea is full, the Admiral hath Jurisdiction super aquam as long as the Sea flows : so as of one place there is divisum imperium at several times : but extend not to any Haven, River, Creek, or other place, that is, infra corpus comitatus : for offences there committed were triable by the Common Law, and out of the mischief and purvien of this statute : for in the preamble, the Sea is only mentioned, and in the body of the Act it is said, in like form and condition, as if any such offence had been committed upon the Land.

¶ As shall be named by the Lord Chancellor of England. ] A nomination by the Lord Keeper of the great Seal of England was taken to

2 & 3 E.6.ca.24.  
Vid. Lib.2. fo. 93  
Binghams case.  
See the Lord  
Sancars case,  
lib.9. 117,118.

Anno 28 Eliz.  
Butlers case.

25 E.3. cap.7.  
40 Ass. p.25.

8 E.2. cor.260.  
46 E.3. Conu-  
sance 36.  
Stanf. pl.coron.  
51.k.  
Regist. 129.  
13 R.2. cap.5.  
2 H.4. cap.11.  
Pl. com.37.  
2 R.3. fo.12.  
19 H.6.7.  
30 H.5.5. per  
Prifott.

Forreque. ca.32.



5 Eliz. cap. 18.

Trin. 7 Eliz.  
Dier 241. the  
case of Brook  
alias Cobham.

be within this Act by the greater opinion of the Justices: but the Statute of 5 Eliz. hath made a Declaration of the Common Law concerning the power and authority of the Lord Keeper of the Great Seal, which hath cleared that, and all other like questions.

¶ To hear and determine such offences after the common course of the Laws of this Land used for Treasons, Felonies, &c. done and committed upon the Land. ] If the offender upon his arraignment before Commissioners by force of this Statute stand mute, he shall have judgement De peyne fort & dure, by force of this general branch, but it is out of the latter words of the Act, viz. And such as shall be convict of any such offence by Verdict, Confession, or Proces. For he that standeth mute, is not convict of the offence but suffereth for his contumacy. Also it is neither by Verdict, Confession, or Proces.

For peine fort & dure: See in the second part of the Institutes, in the exposition upon the Statute of W. 1. cap. 12.

## C A P. L.

### Of Clergy.

What person shall have his Clergy, for what offences, in what suits, who is Judge thereof, and at what time Clergy is to be demanded, you may read at large in Alexander Poulterers case in the Eleventh part of my Reports: where also is resolved the diversity between a Clerk convict, and a Clerk attain; what a Clerk convict which hath his Clergy shall forfeit, and at what time; and that none that hath his Clergy allowed ought to make any purgation at this day; and that the King may pardon the burning of the hand, as well in an Appeal, as upon an Indictment.

<sup>a</sup> If the principal hath his Clergy before attainder, the accessory either before or after ought to be discharged.

<sup>b</sup> You may add to the former report a Record in Rot. Claus. An. 3 E. 3. m. 2. & 18. That for Sacrilege the Ordinary may allow Clergy. So as it is in the election of the Ordinary, either to allow or disallow Clergy in that case.

<sup>c</sup> See a notable Record Trin. 21 E. 3. coram Rege, Rot. 173. Hertford, that Privilegium Clericale non competit seditioso equitanti cum armis platis, & cotearmuris, per leges Angliæ.

<sup>d</sup> It is provided by the Statute of 25 H. 8. that if any person be indicted of Felony for stealing of any goods or chattels in any County, and thereupon arraigned, and be found guilty, or stand mute, or challenge peremptory above the number of twenty persons, &c. they shall lose the benefit of their Clergy, in like manner as they should have done, if they had been indicted and arraigned, and found guilty in the same County, where the same robbery or burglary was done and committed, if it shall appear to the Justices, &c. by evidence given before them, or by examination, that for such robbery or burglary in the same Shire where they were committed or done, they should have lost the benefit of their Clergy by force of the said Statute, viz. of 23 H. 8. cap. 1.

¶ Any person indicted. ] This Act extendeth not to Appeals by Writ or Bill, nor to the Appeals of the Approvers.

¶ Or by examination. ] <sup>e</sup> By these words though the offender confess the Indictment, or stand mute, or challenge above twenty, &c. yet if by examination

Lib. 11. fo. 29, 30.  
&c. Alexander  
Poulterers case.  
Lib. 5. 26, 27. in  
Caudries case.  
Vid. Lib. 5. fo. 50.  
Biggens case, &  
fo. 110. Hestons  
case.

18 Eliz. cap. 6.

<sup>a</sup> Lib. 4. fo. 43, 44.  
Syers case.

<sup>ib.</sup> Bibiths case.

2 E. 3. 27.

22 E. 3. Br. Cor. 260

7 H. 4. 16.

10 H. 4. 5.

3 H. 7. 1.

3 H. 7. cor. 53.

4 E. 6. cor. 184.

3 Aff. 14. 5 Aff. 5.

11 H. 4. 93.

<sup>b</sup> Rot. cl. 3 E. 3.  
m. 2. 18.

<sup>c</sup> Tr. 21 E. 3. cor.  
rege, Rot. 173.  
Hertford.

<sup>d</sup> 25 H. 8. cap. 3.

32 H. 8. c. 3.

Vid. 1 E. 6. ca. 12.

5 E. 6. cap. 10.

<sup>e</sup> Poulterers case.  
Ubi supra fo. 31.



tion before the Justices, the truth of the case appeareth, he may be put from his Clergy.

¶ By force of the said Statute. *viz.* 23 H. 8. So as if for any Burglary or Robbery in one County he were not ousted of his Clergy by the Statute of 23 H. 8. but some later Statute, then the Delinquent shall have his Clergy in the County where the goods are carried: For example, if the robbery be done in a dwelling house, the owner or dweller, his wife, his children, or servants then being within the house, and put in fear and dread by the same, and the goods be carried into another County, he shall not have his Clergy: but if the robbery in the dwelling house be not done with all the circumstances mentioned in this Act of 23 H. 8. (which circumstances are not required by the Statute of 5 E. 6. cap. 9.) he shall not be ousted of his Clergy in the other County. And so of all like cases.

See 1 Jac. cap. 8. Clergy taken from him which do stab another that hath not drawn a weapon, nor stricken first.

Vid. Stanf. pl. cor.  
fol. 123, &c. De  
Clergy.

## CAP. LI.

### Of Abjuration and Sanctuary.

**A**bjuration by the course of the Common Law may be thus described. When a man or a woman had committed felony, and the offender for safeguard of his or her life had fled to the Sanctuary of a Church or Churchyard, and there before the Coroner of that place within forty days had confessed the felony, and took an oath for his or her perpetual banishment out of the Realm into a foreign Country, choosing rather, *Perdere patriam quam vitam*. But that foreign Country, into which he was to be exiled, must not be amongst Infidels. And this was the ancient Law of this Realm, which was, *Prohibemus autem ne Christiana fide tinctus quispiam à regno procul amandetur, neve ad eos qui nondum Christo fidem adjunxerunt relegatur, ne eorum aliquando fiat animorum jactura, quos propria Christus vita redemit.*

Cust. de Norm. c.  
24. & 8. Inter leges  
In. 2. cap. 5.

Inter leges Canoni-  
f. 105. c. 3.

The foundation of the Abjuration was the Sanctuary of the Church or Churchyard. For he or she, that was not capable of this Sanctuary, could not have the benefit of Abjuration. *a* And therefore it is said, that he that committed Sacrilege, because he could not take the privilege of Sanctuary, could not abjure. For the form of Abjuration, see the Statute of Abjuration, Vet. Magna Carta, part 1. f. 167. *b* The Common Law herein was very ancient, and had saved the life of many a man; and continued without change until an Act made in the 22 year of H. 8. cap. 14. whereby it was provided, that the party absured should not be banished out of the Realm, but to some other Sanctuary within this Kingdom: *c* and to say the troth, Abjuration was exceedingly intricate and perplexed by the said Act of 22 H. 8. c. 14. and other Statutes: For which causes all Statutes made before the 35 year of Queen Elizabeth, concerning absured persons, stand repealed by the Statute of 1 Jac. c. 25. whereby the ancient Common Law concerning Abjuration for felony was revived.

*d* But by an Act made in the 21 year of King James it is enacted, That no Sanctuary or privilege of Sanctuary should be admitted or allowed in any case. By which Act, such Abjuration as was at the Common Law, founded (as hath been said) upon the privilege of Sanctuary, is wholly taken away: and the Writ in the Register 69. *a*. De restitutione extracti ab Ecclesia is become of no use.

48 E. 2. cor. 420.  
*b* Sir Th. Weyland  
Chief Justice of  
the Common Pleas  
Anno 17 E. 1. Vid.  
Inter placita Parl.  
An. 19 E. 1. apud  
Ashring in Cr'o.  
Epiphaniae.  
*c* 50 E. 3. c. Artic.  
Cleri. 9 E. 2. c. 10.  
*d* R. 2. c. 9. 7 H. 7. c.  
7. 21 H. 8. c. 2.  
22 H. 8. c. 14. 26 H.  
8. c. 13. 28 H. 8. c. 7.  
33 H. 8. c. 13. 1 E.  
6. c. 12. 2 E. 6. c. 2.  
& 33. 5 E. 6. c. 10.  
13 E. 6. c. 7. 1 Jac. c.  
25.  
*d* 21 Jac. in the  
continuance of  
Statutes, &c.

*e* And yet the abjuration by force of the Statute of 35 El. c. 1. before Justices

35 El. c. 1. & 2.  
ces



ces of Peace, or Justices of Assize, or by force of an Act made at the same Parliament, c. 2. before two Justices of Peace or the Coroner by a Recusant, remaineth still: because such Abjuration hath no dependency upon any Sanctuary. Which being sufficient to shew how the Law standeth at this day, both concerning Sanctuary and Abjuration, might suffice.

But yet he that is desirous to read the general learning of Abjuration the Branch, and of Sanctuary the Root, let him read the *Dirro*, cap. 1. §. 13. & cap. 5. §. 1. where he may read the right use of Abjuration by the ancient Law of England. Et inter leges Edwardi nu. 10. *Custum. de Normandie* cap. 24. *Officium coronatorum* tit. Abjuration. *Rast. pl. 2. Bracton li. 3. fo. 135. & 136. Britton cap. Abjuration, f. 24. & cap. Coroners, f. 7. And Fleta lib. 1. cap. 29. 8 E. 2. Ubi supra. 3 E. 3. Coron. 313. 335. 21 E. 3. 17. 29 Ass. p. 34. Rot. Pat. 25 E. 3. part. 3. m. 16. Hil. 43 E. 3. Rot. 10. Coram Rege Buck. Hil. 26 E. 3. Coram Rege Rot. 20. Quando aliquis abjuravit regnum, Crux ei deliberat' fuit in manu sua portanda in itinere suo per semitas suas, & vocatur Vexillum Sanctæ Ecclesiæ. Rot. Parl. 2 R. 2. nu. 28. the right use of Sanctuary. 6 H. 4. 2. 8 H. 4. 2. 11 H. 4. 40. 7 H. 6. 8. 27 H. 6. 7. 2 E. 4. 17. 21. 9 E. 4. 29. 12 E. 4. 1. 2. 3 H. 7. Coron. Fitz. 54. 1 H. 7. 23, 25. 8 H. 8. Kelway. 188, 189. 190, 191. Fitz. Justice of Peace, fol. 202. Stanf. pl. cor. cap. Abjuration, fol. 116, 117, &c. Et ibidem Sanctuary, cap. 38. Dier 13 Eliz. fol. 296. Lib. 5. fol. 12. 26. Lib. 6. fol. 9. Lib. Intrat. Tit. Abjuration & Sanctuary.*

## CAP. LII.

*De Hutesio & Clamore.*

### Of Hue and Cry.

**T**HE one being an expression of the other. For *huer* in French (unde *Hutesium*) is to *hwt* or *shout*; in English to *cry*. There be two kinds of *Hues* and *Cries*, the one by the Common Law, and the other by Statute. Thereupon there are two pursuits, the one for the King, the other for the party by private suit.

*Hue and Cry* by the Common Law, or for the King, is, when any felony is committed, or any person grievously and dangerously wounded, or any person assaulted and offered to be robbed either in the day or night; the party grieved, or any other may resort to the *a* Constable of the Town, and acquaint him with the causes, describing the party, and telling which way the offender is gone, and requirer him to raise *Hue and Cry*. And the duty of the Constable is, to raise the power of the Town, *b* as well in the night as in the day, for the prosecution of the offender, and if he be not found there, to give the next Constable warning, and he the next, until the offender be found: and this was the Law before the Conquest. *c* Si quis latroni obviam dederit, eumque nullo edito clamore abire permiserit, quancunque fuerit latronis vita æstimata extremum solvat denariolum, aut pleno, perfectoque jurejurando de facinore se nihil habuisse cogniti confirmato. Sin quis proclamantem exaudierit, neque vero fuerit insequutus, sue in regem contumaciæ (ni omnem criminis suspicionem diluerit) poenās dato.

In antiquo M. S. Si quis furi obviaverit, & sine vociferatione gratis eum dimisit, emendet secundum Weram ipsius furis, vel plena lada se adlegiet, quod cum eo falsum nescivit: si quis audito clamore supersedit, reddat *Overfameffa* regis aut plene se laidiet. Bracton who wrote before any Act of Parliament concerning *Hue and Cry*, saith, Omnes tam milites, quam alii qui sunt 15 annorum

*a* Rot. Parl. An. 6 E. 3. n. 6. Constable of the Town to make Hue and Cry.

*b* 2 E. 4. 8. b. & 9. a.

*c* Inter leges Canuti. f. 110 c. 26. See Inter leges Edw. Conf. c. 21.

For *Overfameffa*, See lib. Rub. c. 36. Bracton l. 3. fol.



norum & amplius, jurare debent quod utlagatos, murtidores, robbatores, & burglatores non recipient, &c. Et si Hutefiū vel Clamorē de talibus audiverint, statim audito clamore sequantur cum familia, &c. and herewith agreth Britton.

The Statute of W.1. c.9. being in affirmance of the Common Law, prohibiteth, Que tous communement soient prests a les somons des Viscounts, & au crie de pais de fuer & arrester felons, quant mitter ferra, auxibiens deins fratchises come dehors.

And the Statute of 4 E.1. declareth the Law similiter de omnibus homicidiis, Burglar, occisis, seu \* periclitantibus levetur Hutefium, &c. & omnes sequantur Hutefium, & vestigium si fieri potest: & qui non fecerit, & super hoc convictus fuerit, attachietur quod sit coram Justiciariis de Gaola, &c. And by that Act it appeareth that so it is in case of Rape, and therewith agreth a Bracton also.

The life of Hue and Cry is fresh suit.

b Thamar the daughter of King David being violently ravished by her brother Amnon, the Text saith of her, Quæ aspergens cinerem capiti suo, scissa talari tunica, impositisque manibus super caput suum ibat ingrediens, & clamans.

c They which levy not Hue and Cry, or pursue not upon Hue and Cry, shall be punished by fine and imprisonment. d Also if a man be present when a man is murdered, or robbed, and doth not endeavor to attach the offender, nor levy Hue and Cry, he shall be fined and imprisoned.

Of Hue and Cry by force of Acts of Parliament in five cases. e First, If a watchman doth arrest a night walker, and he disobey and fly, the watchman may make Hue and Cry.

2. f Si quis forestarius, Parcarius, aut Warrennarius in baliva sua malefactores aliquos invenerit vagantes ad damnum ibidem faciend', & qui se Forestariis aut Warennariis illis post Clamorē & Hutefium levatum ad pacem regis ad standum recte reddere noluerint, immo ad malitiam suam exequend' & continuand' & pacem regis diffugiend' fugam fecerint, & vi & armis se defenderint, licet Forestarii, Parcarii & Warrennarii illi, aut alii quicunque ad pacem domini regis existentes in comitativa Forestariorum, Parcariorum, aut Warrennariorum illorum venientes ad tales malefactores sic inventos arrestand' seu capiend', aliquem seu aliquos hujusmodi malefactorum interfecerint, non propter hoc occasionentur coram domino rege, & justiciariis quibuscunque aut aliis balivis domini regis, aut aliorum quorumcunque infra libertatem aut extra: nec propter hoc amittant vitam, aut membrum, aut aliam poenam subeant, immo firmam pacem domini regis inde habeant. Sed bene caveant Forestarii, Parcarii, Warrennarii, & alii quicunque, ne occasione contentionis, discordiæ, contumeliæ, aut alicujus malevolentiae, seu odii præhabit' aliquibus per balivas suas transeund' malitiose imponant, quod occasione malefaciendi in balivis suis intrans, cum hoc non fecerint, nec ipsos vagantes ut malefaciant, nec malefacientes invenerint, nec causam malefaciendi quærentes, & sic eos occidant. Quod si fecerint, & de hoc fuerint convicti fiat de morte sic interfectorum, prout aliorum ad pacem domini regis existentium, & prout de jure, & secundum consuetudinem regni fuerit faciend'.

3. Welshmen outlawed, or indicted of treason or felony, that fly into Herefordshire, shall be apprehended, &c. or else pursued by Hue and Cry, and a forfeiture upon those that do not pursue.

4. Hue and Cry shall be levied upon takers of carriage within the Mierge of the Staple of that which pertaineth to the Staple.

5. Where a man is robbed: Upon Hue and Cry, &c. what remedy he shall have against the Hundred, &c. and how and in what manner the Hue and cry shall be made in that case, see the Statutes, & 1.7.f.6. & 7. the Statutes well expounded. And this robbery must be done in the day time, and not in the night, otherwise the party grieved shall not have his Action. And so note a diversity between a hue and cry at the Common Law, or for the King, and a hue and cry by Statute where the party grieved is to have his remedy by private action. Note also a diversity in the prosecution at the Common Law, or for the King, & by the Statutes which give the party remedy, for a prosecution to the next Constable is

Britton, fol. 15. & 19. Fleta l. 1. c. 24. See the 2. part of the Institutes. W.1. c.9.

4 E. 1. de officio coronatoris.

See the Statute of Winch 13 E. 1.

\* 7 E. 3. f. 16.

22 Ass. 57.

38 E. 3. f. 6. assaulted to be robbed.

9 E. 4. 26.

See the Custum' of Norm. c. 24.

a Bracton l. 2. f.

28 E. 3. cap. 11.

b 2 Regum c. 13.

Verf. 19.

c Bract. l. 3. f. 118. b.

Ca. Inc. m. c. 155.

3 E. 3. Cor. 333.

d See 8 E. 2. Cor.

395.

e Stat. de Winc.

Watch. 4 H. 7. f. 2.

18.

f Statutum de

Anno 21 E. 1.

Magna Cart. f. 118.

a. Foresters.

23 H. 6. c. 5. Vid.

17 H. 8. c. 26.

Welshmen.

27 E. 3. c. 4.

staple.

Winch. 13 E. 1.

28 E. 3. c. 11. 27 El.

c. 13. 38 El. c. 25.



Lib. 7. fol. 7. 8.  
22 El. Dier 370.

29 E. 3 9. 38 E. 3. 6  
See 5 H. 7. 5. a.  
21 H. 7. 28. a.

Stat. de 18 E. 2.

De civitate Lon-  
don. capienda in  
manum Regis pro  
Hutesio non le-  
vato. Rot. Claus.  
30 H. 3. m. 5.

good by the Common Law, but so it is not by the said Statutes, which give the party grieved his Action. See 1. 7. f. 7. & 8. 22 El. Dier 370. So the prosecution at the Common Law is a good excuse upon an Indictment at the Kings suit, but note that it is no bar to the parties Action.

Where Hue and Cry either by the Common Law, or by force of any Statute is levied upon any person, the arrest of such person is lawful, although the cause of the Hue and Cry be feigned; and if the case be feigned, he that levy the same shall also be arrested, and shall be fined and imprisoned. But common fame and voice is not sufficient to arrest a man in case of felony, unless a felony be done indeed.

It is an article of the Act, to enquire of Hue and Cries levied and not pursued.

Mandatum est Guilielmo de Haverhull Thesaurario Regis, quod Civitatem London capiat in manum Regis, eo quod Cives ejusdem Civitatis non levaverunt Hutesium & Clamorem pro morte Magistri Guidonis de Arretio & aliorum interfectorum secundum legem & consuetudinem Regni. Teste Rege apud Wendeslok 22 die Augusti.

## C A P. LIII.

### Of Mayhem.

a First part In-  
stitutes § 194. 502.

Stanf. Pl. Cor. 38. b.  
Cust. de Norm. c.  
79. Mehairmus.

Bract. J. 3. 144. 145.  
Fleta l. 1. c. 32.

b Rot. Claus. anno  
13 H. 3. no. 9.

See before c. 13.  
for cutting out of  
tongues, &c.

c Camden Brit. p.  
593.

d Bract. l. 3 f. 148.  
n. 4. Mirror cap. 4.

§. De pains in di-  
vers manners. Brit.

f. 48. b. Fleta l. 1.  
c. 38. Membrum

promembro. 18 E.  
3. 20. a. Vid. 28 E.

3. f. 94. 8 H. 4. 20.  
21. Coron. 458.

**O**f Mayhem you may read at large in the a First part of the Institutes Sect. 194. & 502. and in Justice Stanford. And where (as it is there cited) he saith, Castratio vero, quamvis latens sit, adjudicatur mahemium. Whereof we find an example.

b H. Hull indictatus fuit de mayhemio, eo quod abscidit virilia Johannis monachi, &c. quem idem H. deprehendit, &c. cum A. uxore sua. Of the like accident you may read in Camden.

c Dominus Robertus Nevil (cum numerosam prolem ex uxore suscepisset) ignotus in adulterio deprehensus, & ab adulteræ marito in vindictam genitalibus mutulatus, brevi vi doloris expiravit.

Vide inter leges Alveredi, cap. 40. de vulneribus fol. 43.

d By the ancient Law of England, he that maimed any man, whereby he lost any part of his body, the Delinquent should lose the like part, as he that took away another mans life, should lose his own.

And it is truly said, that Duellum est Mahemium inceptum, and Mahemium est Homicidium inchoatum. And therefore in the Appeal or Indictment it is said Felonice mayhemavit.



## CAP. LIV. Of Præmunire.

**P**Rimerment pur ceo que monstre est a nostre seignior le roy per grevouses & clamouses pleints des Grandees & Communes avant ditz, coment plusors gents sont, & out estre treits hors de realme a responder des choses dont la conusance appartient a la court nostre Seignior le roy; Et auxint que les judgments rendus in mesme le court sont empeache en autre court, in prejudice & disherison nostre dit Seignior le roy & de sa corone, & de tout le people de son dit realme, & in defeasance & anientisement de la Common ley de mesme le realme use de tous temps. Sur quoy ewe bone deliberation ove les Grandees & autres le dit council, assentus est & accord per nostre dit Seignior le roy, & les Grandees & communes suisditz, Que tous gents de la ligeance le roy, de quel condition que ilz sont, que trahent nulluy hors de realme en plea dont le conusance appartient a la court le roy, ou des choses dont judgment soit rendus en le court le roy; ou que suent en autri court a defaire ou impeacher les judgments rendue in le court le roy, Eient joure, &c. In English thus.

27 E.3. cap. 1.  
The print being  
examined, agreeth  
with the Record.  
See the first part  
of the Institutes,  
Sect. 199.

The Statute of  
16 R.2. cap. 9.  
saith; *In Curia  
Romana, vel alibi.*

**F**irst because it is shewed to our Lord the King by the grievous and clamorous complaints of the Great Men and Commons afore said, how that divers of the people be, and have been drawn out of the Realm to answer of things, whereof the cognisance pertaineth to the Kings Court: And also that the judgments given in the said Court be impeached in another Court in prejudice and disherison of our Lord the King, and of his Crown, and of all the people of his said Realm; and to the undoing and destruction of the Common Law of the same Realm at all times used. Whereupon, upon good deliberation had with the Great Men and other of his said Council, it is assented and accorded by our Lord the King, and the Great Men and Commons afore said, that all the people of the Kings ligeance, of what condition that they be, which shall draw any out of the Realm in plea, whereof the cognisance pertaineth to the Kings Court, or of things whereof judgment is given in the Kings Court, or which do sue in any other Court to defeat or impeach the judgments given in the Kings Court, shall have day, &c.

The effect of the Statute of 16 R.2. is, If any pursue or cause to be pursued in the Court of Rome, or elsewhere, any thing which toucheth the King, against him, his Crown and Regality, or his Realm, their Potaries, Procurators, &c. Hautores, &c. shall be out of the Kings protection.

16 R. 2. cap. 7.



Fourth part of  
the Institutes,  
cap. 8. Artic. 1.  
Die Decemb.  
Anno 21 H. 8.  
against Cardinal  
Woolsey.  
Ver. F.B. 143.

In this Act is declared the Sovereignty, Prerogative, and Freedom of the Crown of England, and the first Article exhibited by the Lords of the Council, (whereof Sir Thomas More Chancellor was one) and the principal Judges concerning this matter, is worth your reading.

This offence is called a Præmunire of the words of the Writ, grounded upon this and other Statutes for punishment thereof. For the words of the Writ be, Rex vicecomiti, &c. Præmunire fac. A.B. &c. And rightly it is so called, for he that is præmonitus is præmunitus.

Before the making of this Statute of 27 E. 3. there were three great mischiefs. First, That the Kings Subjects have been drawn out of the Realm, to the answer of things, whereof the consueance pertained to the Kings Court. Secondly, of things whereof judgments have been given in the Kings Courts. And thirdly, that after judgments given in the Kings Courts of the Common Law, of matters determinable by the Common Law, suits were commenced in other Courts within this Realm, to defeat or impeach those Judgments. And these three mischiefs had three unsufferable effects: First, the prejudice and disherison of the King and of his Crown. Secondly, the disherison of all his Subjects. And thirdly, the undoing and destruction of the Common Law of this Realm: all which appear in the preamble of this Act.

They are called [other Courts] either because they proceed by the rules of other Laws, as by the Canon or Civil Law, &c. or by other trials then the Common law doth warrant. For the trial warranted by the Law of England for matters of fact, is by verdict of twelve men before the Judges of the Common law of matters pertaining to the Common law, and not upon examination of witnesses in any Court of Equity: So as alia curia, is either that which is governed per aliam legem, or which draweth the party ad aliud examen. For if the freehold and inheritances, goods and chattels, debts and duties, wherein the King or Subject hath right or property by the Common law, should be judged per aliam legem, or be drawn ad aliud examen, the three mischiefs aforesaid expressed in the preamble and in this Act should follow, viz. disherison of the King and of his Crown, the disherison of all his people, and the undoing and destruction of the Common law at all times used: by which words of this Act it appeareth, that all these mischiefs were against the ancient Common laws at all times used. And that also appeareth by the ancient Writs of the Common law, called Ad iura regia, whereof some touch hath been given before, and which are worthy the reading: and also by divers Acts of Parliament; as the Statute of Carlile, Anno 35 E. 1. whereof we have treated before in the Second part of the Institutes: and by the Statute of 25 E. 3. De provisoribus. And it is observed, that in 29 E. 3. within two years after the said Act of 27 E. 3. that they that were called in question upon the Statute of Præmunire, Invenerunt manucaptos sufficientes, & sacramentum præstiterunt, quod non attemptabunt, citra mare vel ultra, quod in præjudicium regis, legum, seu coronæ, seu judiciorum in curia Regis reddere valeat quoquo modo, &c. Whereby, and many other like Records it appeareth, that Judgment ought not to be questioned citra mare, in any Court, unless it be according to the course of the Laws of the Realm.

By the Statute of 4 H. 4. cap. 23. it is ordained and stablished, that after Judgments given in the Courts of our Lord the King, the parties and their heirs shall be thereof in peace, until the Judgment be undone by attainr, or by error, if there be error, as hath been used by the Laws in the times of the Kings Progenitors.

a Also that which hath been said appeareth by our Books and ancient Records, as hereafter shall appear.

b 5 E. 4. fo. 6. where the Statute of 16 R. 2. cap. 5. saith, In curia Romana vel alibi, Ecclesiastical Courts within the Realm are within this word [alibi.]

c Mich. 11 H. 7. it was adjudged by the whole Court, that a suit in the Ecclesiastical Court within the Realm for a temporal cause, was in case of Præmunire.

Regist. 61, 62. &c.

Mich. 29 E. 3. coram Rege.  
Rot. 44. Cornub.  
V. 46 E. 3. 13, 14.  
Nota, citra mare.

4 H. 4. ca. 23.

a 10 H. 4. 1, 2.  
18 H. 6. 6. b.  
b 5 E. 4. 6. b.  
44 E. 3. 36.  
c 11 H. 7. Præmunire Fitz.  
15 H. 7. acc.  
lib. Inter. Rast.  
468.



*d* A president of a Premunire, for suing in the Ecclesiastical Court for a debt. *d* Rast. pl. 429. b. & 430.  
*e* It was resolved; that he that sued in the Ecclesiastical Court for the forgery of a last Will and Testament, incurred the danger of a Premunire, because the party grieved might have his remedy by the Common Law. And in the same year of 17 H. 7. Justice Spilman also reporteth, that one Turberville, as well for the King, as for himself, did sue a Premunire against a person for suing for riches in the Ecclesiastical Court, alledging the same to be severed from the nine parts, and judgment given against the defendant.

Also it appeareth that the Admirals Courts is within this word [alibi] if he hold plea of any thing, which is not done super altum mare, but intra corpus comitatus.

*f* Richard Beauchampe Esquire and Thomas Pauncefoot Esquire, and others, are charged with the offence of Premunire, for that they sued John Cressley Esq; before Henry Duke of Exeter, Admiral of England, for taking away a Crosse of Gold and other goods, supposing the same to be taken super altum mare, where in truth they were taken at Stratford in the County of Essex; where the statute of 16 R. 2. is recited, that none should sue in curia Romana seu alibi, &c. and that the consilience of this plea belonged to the Common law, and not to the Court of the Admiral. And so it is of the Constable and Marshal, if they hold plea of a matter determinable by the Common law.

*g* Isabel Winnington exhibited a bill of Premunire against William Powdich upon the statute of 16 R. 2. cap. 5. for suing in the Admiral court before John Earl of Huntingdon, Admiral of England, for a cause which belonged to the Common law, whereunto the defendant pleaded not guilty.

And the reason of all these cases is, because they draw matters triable by the Common law ad aliud examen, and to be discussed per aliam legem.

But some have made a question, Whether since the Ecclesiastical Jurisdiction was acknowledged to be in the Crown, an Ecclesiastical Judge holding plea of a temporal matter belonging to the Common law, doth incur the danger of a Premunire. Though hereof there is no question at all, yet lest any man might be led into an error in a case so dangerous, we will clear this point by Reason, President, and Authority. The reason holdeth still to draw the matter ad aliud examen, &c. And the like question might be made for the Admiral Court, which is, and ever was, the Kings Court, but governed per aliam legem: and so likewise of the Court of the Constable and Marshal.

At a Convocation holden Anno 22 H. 8. by a publick instrument made by all the Bishops and the whole Clergy of England, the King was acknowledged to be Supream head of the Church of England. *b* After this, viz. 24 H. 8. it appeareth that the Statute of Premunire remained in force against Ecclesiastical Judges, for holding of pleas merely determinable by the Common law.

In 25 H. 8. Richard Nich Bishop of Norwich was attainted in a Premunire at the Kings suit, and his case was this. Within the Town of Thetford there then was a custom, that all Ecclesiastical causes rising within the said Town should be determined before the Dean there, having a peculiar Ecclesiastical Jurisdiction, and that no inhabitant of the same Town should be drawn before any other Ecclesiastical Judge, and that every person suing contrary to that custom, the same being presented before the Maior of Thetford, should forfeit six shillings eight pence; and that an inhabitant of Thetford, for an Ecclesiastical cause rising within Thetford, sued another before the Bishop of Norwich, within his Consistory court at Norwich: and this was presented before the Maior of Thetford according to the custom, whereby he forfeited six shillings eight pence. The said Bishop, cited the said Maior for taking of the said Presentment Pro salute animæ to appear before him at his house at Hoxon in Suffolk, where the Maior appeared, and there the Bishop ore tenus injoynd him, upon pain of Excommunication to aduul the said presentment before a day. And for this offence he was attainted in a Premunire upon his confession before Fitz James Chief Justice, and the Court of Kings Bench, upon the Statute

*d* Rast. pl. 429. b. & 430.  
*e* 17 H. 7. of the report of Justice Spilman.

*f* Mic. 28 H. 8. coram Rege.

*g* Mic. 9 H. 7. coram Rege. Rast. pl. 23. but this cause is entred. Trin. 9. H. 7. Rot. 37. coram Rege.

*b* 24 H. 8. tit. Premunire, Brook 16.

Hil. 25 H. 8. coram Rege. Rot. Rich. Bishop of Norwich his case.



of 16 R.2. the Record whereof we have seen. By which judgment two points are cleared: First, that the Statute of Premunire extends to Ecclesiastical Courts within the Realm. Secondly, that after the King was in possession of his Supremacy, the Bishops incurred the danger of Premunire.

Trin. 36 H.8. coram Rege. Rot. 9. the B. of Bangors case.  
D. & St. lib. 2. ca. 24. fo. 106. b. Lib. 2. ca. 23.

The Bishop of Bangor was attainted in a Premunire for holding plea of an Advowson, and of riches severed from the nine parts.

Saint Germin in his Book of Doctor and Student, who wrote after 26 H. 8. holdeth: That if a man maketh a promise for a temporal thing, and swear to perform it, and doth it not; if he be sued for perjury in the Spiritual Court, a Prohibition or a Premunire lyeth in that case. Also he saith: If a man be Excommunicate in the Spiritual Court for trespass, or such other thing, as he longs to the Kings Crown and his Royal Dignity, &c. the party if he will, may have a Premunire fac. against him.

Br. tit. Premunire. 21. Temps E. 6.

Brook reporteth, that Barloc Bishop of Bath and Wells, in the Reign of King E. 6. deprived the Dean of Wells, which Deanry was a Donative: and thereby incurred the danger of a Premunire.

1 Eliz. cap. 1.

By the Statute of 1 Eliz. (which restoreth the ancient Jurisdiction Ecclesiastical to the Crown) the Act of 1 & 2 Ph. & Mar. cap. 8. is repealed. But there is a special proviso in that Act of 1 Eliz. that it should not extend to repeal any Clause, Matter, or Sentence contained or specified in the said Act of 1 & 2 Ph. & Mar. which doth concern matter of Premunire, but that so much of that which concerneth any matter or cause of Premunire, should stand in force and effect. And that clause of the Statute of 1 & 2 Ph. & Mar. is this, That whosoever shall by any Proces obtained out of any Ecclesiastical Court, within the Realm or without, by pretence of any spiritual jurisdiction, or otherwise, contrary to the Laws of the Realm, inquiet or molest any person, &c. for any Mannors, &c. parcel of the possessions of any Religious House, &c. shall incur the danger of the Act of Premunire, in Anno 16 R. 2.

25 H.8. ca. 20.

See the statute of 25 H. 8. which also hath reference to the said Act of Premunire, and is revived by 1 Eliz.

Trin. 29 Eliz. in Communi banco. Rot. 747. Tho. Stoughtons case.

Thomas Stoughton Parson of N. in Suffolk, brought a Writ of Premunire against R. T. upon this statute of 27 E. 3. for suing in the Court of Audience of the Archbishop of Canterbury, to impeach a judgment given in a Quare Impedit, before the Justices of Assize in the County of Suffolk, &c. the defendant pleaded not guilty, &c. And this (omitting many other things for this matter) shall suffice. And now let us peruse the body of the Act.

¶ Trahe nulluy hors de Realme. ] Of this there is no question, being against the ancient Law of the Realm always in use; as by this Act appeareth. And this was a remedy for the first mischief.

¶ Ou des choses dont judgements fuer' rendus, &c. ] This branch prohibiteth all forraign suits, viz. in the Court of Rome, &c. for any thing whereof judgment was given in the Kings Court. And this was a remedy for the second mischief.

¶ Ou que sount en autre court a defaire ou impeacher les judgements rendue in le Court le Roy. ] This is a remedy for the third mischief. For having by the second branch provided against forraign Suits to undo, or impeach Judgments in the Kings Court, this branch doth (as hath been said) extend to all Courts, which proceed by the rule of another Law, or draw the party ad aliud examen; and therefore this branch doth extend to Ecclesiastical Courts, to the Court of the Constable, and Marshal, to the Court of the Admiralty, and to the Court of Equity proceeding in course of equity: for it had been to no effect to have provided against forraign suits, which were troublesome, tedious, and chargeable, and to have suffered the party to have attempted and prosecuted any thing at home within this Realm,

to



to the prejudice and dishonour of the King, and his Crown, and all his subjects, and to the subversion of the Common Law. And first we will speak of the Court of Equity. This Court cannot proceed in course of equity after judgment at the Common Law, for three reasons. First, For that it draweth the matter triable, and determinable by the Common Law, ad aliud examen, viz. to a trial by witnesses, which (as hath been said) is contrary to the ancient Law of the Realm, and against the Purview of this Statute. Secondly, After judgment the parties ought to be at peace and quiet, for *judicia sunt tanquam juris dicta*, and if the party against whom judgment is given, might after judgment given against him at the Common Law, go into Court of Equity for matter in equity, there either should be no end of Suits, or every Plaintiff would leave the Common Law, and begin in the Court of Equity, whither in the end he must be brought, and that should tend to the utter subversion of the Common Law, as it is said in the Act. Thirdly, The Court of Equity in the proceeding in course of equity is no Court of record, and therefore it cannot hold plea of any thing, whereof judgment is given, which is a judicial matter of record. And this is the ancient Law at all times used, as this Act speaketh. As taking some few examples for many, both before, and after this Statute.

37 H. 6. 14.

In the case of Edmond Earl of Cornwall in Anno 6 E. 1. it appeareth, that after judgment given before Roger Loveday and Walter Winborn Justices of Oier and Terminer, against Walter Bishop of Exeter and his Tenants, the said Bishop procured the Bishop of Landaff in the Parish Churches of Cornwall and Devonshire to pronounce sentence of Excommunication by the sentence of the Archbishop of Canterbury (which sentence was had by the procurement of the said Bishop of Exeter) against all persons of what estate, degree or dignity soever, that dealt in the proceedings, &c. against the said Bishop and his tenants before the said Justices: and in this part of the record being in French, it is said, *La Corone, & la dignite nostre Seignior le Roy ne doit per autre estre Justice ne guyne, &c. Et les choses que sont passes en sa Court per judgement, ou en autre manner, ne devient estre en autri Court recreces, &c.* Out of this Record we may observe three things. First, What the ancient Law of this Realm was, before the making of this Act. Secondly, That [en autri Court] which are the words of this Act, was taken to be another Court within the Realm. Thirdly, That the mischief before this Act, was for Suits in other Courts within this Realm, after judgments given in the Kings Courts. Read the whole Record, which beginneth thus, *Cornub. Dominus Rex mandat, &c.*

Anno 6 E. 1. the  
Earl of Cornwall's  
case.  
Lanceston in  
Thefaur.

And in 13 E. 3. there was a Suit in the Court of Rome after judgment in the Kings Court, and in that Record it is said, *In regis contemptum, & Coronæ suæ præjudicium, ac judicii prædicti enervationem manifestam, &c. Ac quod judicia in Curia Regis rite reddita frustra redderentur, nisi debitum sortirentur effectum.*

*a* Fleta who wrote before this Statute, saith, *Judicia debent rata permanere, & firma consistere, usque ad condignam satisfactionem inviolabiliter observentur.*

And as a Maxim of the Common Law in the judicial Register, fol. 12. 35. 41. &c. it is often said, *Ea quæ in Curia Domini Regis rite acta sunt, debitæ executioni demandari debent.*

Now let us see what hath been done since the Act. *b* The Statute of 4 H. 4. cap. 23. hath been recited before, which is a judgment of Parliament. *c* A judgment was obtained by covin and practice against all equity, and conscience in the Kings Bench: for the Plaintiff retained by collusion an Attorney for the Defendant, (without the knowledge of the Defendant, then being beyond Sea) the Attorney confesseth the Action, whereupon judgment was given, *d* the Defendant sought his remedy in Parliament, and by Authority of Parliament power was given to the Lord Chancellor by advice of two of the Judges to hear, and order the case according to equity: which proveth that the Chancellor could not do it of himself without higher Authority.

*e* No Injunction after verdict at the Common Law is to be granted in Chancery, & if the Lord Chancellor should grant an Injunction in that case the Judges said, that

Mich. 13 E. 3. In  
Communi Banco  
Rot. 40. Inter Jo-  
hannem de Dingle  
& Mich. de Englis  
Bedf.

*a* Fleta l. 6. cap. 36.  
Trin. 19 E. 3. Rot.  
50. Coram Rege.  
John Bolrons case.  
Mich. 19 E. 3. Rot.  
16. & Rot. 29. Alan  
de Conesburghs  
case. F. N. B. 169. f.  
20 E. 3. effoin 24.  
21 E. 3. 40. b.  
*b* 4 H. 4. cap. 23.  
*c* Palch. 5 E. 4. Co-  
ram Rege inter  
Cobbe & Nore.  
*d* Rot. Parl. simile  
3 H. 5. num. 44.  
& 3 H. 6. num. 12.

e 22 E. 4. 37.



that if the Chancelor imprisoned the party for breach of the Injunction, they would grant an Habeas corpus and deliver him.

1 Decemb. 21 H.8.  
Art. 20.

Amongst the Articles preferred to the King by Sir Thomas Moore Lord Chancelor of England, and all the Privy Council, and by Fitz-James Chief Justice, & Justice Fitz-Herbert against Cardinal Woolsey, one is in these words, [ And the said Lord Cardinal hath examined divers and many matters in the Chancery, after judgment thereof given at the Common Law, in subversion of your Laws, and made some persons to restore again to the other party condemned that, that they had in execution by vertue of the judgment of the Common Law] which I have seen in parchment under all their hands, and as yet to be seen.

Doct. & Stud. cap.  
18. the book of di-  
versity of Courts.

If judgments given in the Kings Courts should be examined in Chancery, before the Kings Council, or any other place, the Plaintiff or Demandant should seldom come to the effect of their suit, nor the Law should never have end, &c. See the diversity of Courts, cap. Chancery.

Mich. 8 & 9 El. in  
the Kings Bench.

Ralph Heydon Gent. was indicted of a Premunire upon the Statute of 27 E. 3. for procuring of Sir Nicolas Bacon Lord Keeper of the Great Seal, to grant an Injunction in Chancery after judgment given in an Ejectione firme of lands in Hertfordshire. And the record saith, Quod prædictus Radus machinatus est antiquas leges, & consuetudines Regni subvertere.

Trin. 21 El. in  
Communi Banco  
Rot. 319.

A Writ of Premunire upon the said Statute of 27 E. 3. by Ric. Beans against Richard Lloyd, for suing before the President and Council in Wales, after judgment given in the Court of Common Pleas, in an Action of debt for forty and two pound ten shillings, in subversionem legum antiquarum, &c.

Pasch. 27 El. in the  
Kings Bench.

Peter Dewse was indicted for procuring of Sir Thomas Bromly then Lord Chancelor, to grant an Injunction in the Chancery after a Judgment given in an Ejectione firme.

Trin. 30 El. in the  
Kings Bench.  
Diversity of  
Courts, cap. Chan-  
cery.

John Heal of the Inner Temple London Esquire, was indicted of a Premunire, for procuring a suit in Chancery after a Judgment given at the Common Law, contrary to the Statute of 27 E. 3. And the council of Heal took two exceptions, one, that the Court of Chancery was not within the Statute of 27 E. 3. another, that one of the parties to the suit in Chancery was named in one place by one name of baptisme, and in another part of it by another. The Court resolved that the Court of Chancery was within the Statute of 27 E. 3. but found the other exception concerning misnaming to be true. And therefore they quashed the Indictment, but made a memorandum indorsed upon the back of the Indictment, that it was overthrown for mistaking a name, and not for the matter.

Mich. 39 & 40 El.  
See the Fourth  
part of the Inst.  
cap. Court of  
Chancery.

Thomas Throckmorton exhibited a bill in the Chancery against Sir Moyl Finch after judgment given against him in the Court of Exchequer upon apparant matter of equity. Upon which Bill the Defendant demurred in Law, and for that Sir Thomas Egerton then Lord Keeper inclined to rule over the demurrer, saying that he would not meddle with the judgment, but punish the corrupt conscience of the Defendant, in relieving the Plaintiff in equity: Upon a petition to Queen Eliz. ( who ever favoured the due proceeding of her Laws,) she referred the consideration of the Demurrer to all the Judges of England, who hearing Council learned on both parts, and upon view of Presidents in the time of H. 8. and since of Injunctions granted after judgments, and finding very few of them to warrant that which had been affirmed, and none of them to be done by the advice of any of the Judges, they all after divers hearings, and conferences, and consideration had of the Laws and Statutes of the Realm, unanimously resolved, that the Lord Keeper could not after judgment given relieve the party in equity, although it appeared to them, that there was apparant matter in equity. And amongst others, the Judges gave this reason that if the party against whom judgment was given, might after judgment given against him at the Common Law, draw the matter into the Chancery, it would tend to the subversion of the Common Law, for that no man would sue at the Common Law,



Law, but originally begin in Chancery, seeing at the last he might be brought thither, after he had recovered by the Common Law; and thereupon they all certified, that the Demurrer was good, and that Sir Moyl Finch the Defendant ought not to answer.

An Information upon this Statute of 27 E. 3. against Sir Anthony Mildmay, for that he and other Commissioners of Sewers did impeach a judgment in the Kings Bench: he purchased a pardon from the King, and pleaded it. Hil. 12 Jac. Regis Coram Rege.

See a Privy Seal bearing Teste 18 Julii, Anno Domini 1616. to the contrary, obtained by the importunity of the then Lord Chancellor being vehemently affraid: Sed judicandum est legibus, and no President can prevail against an Act of Parliament. And besides, the supposed Presidents (which we have seen) are not authentical, being most of them in torn papers, and the rest of no credit.

¶ Eient jour contenant le space de 2 moys per garnishment a faire a eux, &c. ] By this it appeareth that a Premunire lieth as well for the party, as for the King, and they both may join in one Writ. 44 E. 3. 7. 36. 39 E. 3. 7. 7 E. 4. 2. 27 H. 6. 5. 35 H. 6. 30

\* If the Defendant come not at the day, &c. by the express letter of the Law judgment shall be given against him according to this Act. This suit need not be against them by original Writ, but if the Defendant be In Custodia Mareschalli, the suit may be against him by bill, because the end of the giving of the two months was, that they should have notice, which is satisfied, and therewith agreeth the Presidents; and the Defendant cannot be sued in any other Court, when they are In Custodia Mareschalli. See the Statute of 18 El. cap. 5. but that Statute extends to common Informers, and not when the suit is commenced by the party grieved. \* 43 E. 3. 6. 42 E. 3. 7. 2 R. 3. 17. 27 H. 6. 5. 22 H. 8. Tit. Praem. Br. 1. Tr. 35 E. 3. Rot. 95. Coram Rege. 39 E. 3. 37. 30 E. 3. 11. 44 E. 3. 36. Forebys case.

a But if the Defendant appear and plead, and the issue be found against him, or if he demur in Law, &c. judgment shall be given against him, that he shall be out of protection, &c. And so hath this Statute been interpreted, and judgment given accordingly. Peruse well the words of this Act for this point, and see the book in 8 H. 4. 6. a 8 H. 4. 6. Lib. 11. f. 34 b. in Alex. Poulterers case.

By the Statute of 38 E. 3. c. 2. the Defendant ought to appear in person, and therefore he cannot appear by Attorney without a special Writ out of the Chancery: and this Act doth bind as well those that are Lords of Parliament, as others. 39 E. 3. 7. 9 E. 4. 2. 15 H. 7. 9. F. N. B. 26. m.

¶ Avant le Roy & son Council. ] Here Council cannot be taken, as most commonly it is, for his Judges of his Courts of Justice, who are said to be of his Council for proceedings in course of Justice, because the Courts of Justice are hereafter in this Act named: neither doth it intend the Kings Privy Council, but the King and the Lords of Parliament in Parliament, which is a Court of Justice. 27 H. 6. 5. 2 R. 3. 15

See the First part of the Institutes, Sect. 164. Veigne les Burgeses al Parlement. There is Commune Concilium, Magnum Concilium, Privatum seu continuum concilium, and Concilium Justiciariorum, le Council des Justices. The King is armed with divers Councils.

¶ Ils, lour procurators, Attornies, Executors, Notaries, & Maintainers. ] Note by this Act the Procurers, Attornies, Executors, Notaries, and Maintainers shall have the same punishment, that the Principal shall have. Note in the Statute of 2 R. 2. this word [ fautors ] crept in, a word ( derived a favendo ) of a large extent, as it was construed in the reign of H. 8.

The Plaintiff may choose whether he will make them all principals, or the one principal, and the other accessories, but the damages shall be severally taxed. He that procures one to sue to the Court Christian, shall forfeit as much as he that sueth, and is principal as well as the other, and are in equal degree of Premunire: but if they both be indicted, the one of the act, and the other of the

Stanf. pl Cor. 44. f. 44 E. 3. 7. 35 H. 6. 30. 42 E. 3. 7. 8 Rot. 2. Prem. 12. 8 H. 4. 6. pl. com. 97. b.

pro



procurement, and he that is charged with the procurement is found guilty, and the other by another enquest is found not guilty, judgment shall never be given against him, which was indicted of the procurement, because he cannot be an offender, but in respect of the offence of the other.

See Littleton Sect. 199. and the first part of the Institutes the same Sect. Lib 7. fol. 14. in Calvins case.

**[ Hors de la protection le Roy. ]** By these words the persons attained in a Writ of Premunire are disabled to have any action or remedy by the Kings Law, or the Kings Writs; for the Law and the Kings Writs are the things whereby a man is protected and aided, so as he that is out of the Kings protection, is out of the aid and protection of the Law.

25 E. 3. cap. 2.  
See 5 El. cap. 1.

But by the Statute of 25 E. 3. it is provided, that he that purchaseth provisions to Abbies or Priors shall be out of the Kings protection, and that a man may do with him, as with the enemies of the King and his Realm, and that he that shall commit any thing against such provisors in body or goods, or other possessions, shall be excused against all people.

34 H. 8. forfeit. Br. 101. Pasch. 21 El. resolution of the Judges in Trudgyns case. Dier manuscript. Vide before. 25 E. 3. Verb Et soit assavoir.

**[ Et lour terres, biens, & chateaux forfait ou Roy. ]** This is intended of the lands that he hath in fee-simple. or for life, which the Delinquent might lawfully forfeit, and not lands in tail: for tenant in tail shall forfeit only for term of his life, for that was all he could lawfully forfeit at the making of this Statute, either in case of Treason or Felony. And so it was resolved by the Judges in the case of Trudgyn of Devonshire, who was attainted of a Premunire upon the Statute of 13 El. cap. 2.

Nota, This is a new kind of forfeiture given by this Law, and is penal, and cannot by equity extend further then the records, and therefore this Act extendeth not to the forfeiture of Fairs, Markets, Rents charges, Rent seek, Warrens, Annuities, or any other hereditaments that is not within this word [ terre. ]

**[ Lour corps imprison, & rents al volunt le Roy. ]** The greatness of these punishments do shew the greatness of the offence.

16 R. 2. cap. 5. Examples of these are quoted before.

It is to be observed, that the said Statute of 16 R. 2. is strictly penned against offenders. For first, it extendeth to all persons of what quality, or sex soever, the words be [ if any. ] 2. To all Courts of what Jurisdiction soever, and whether holden by right or by wrong, In curia Romana, seu alibi, which word (alibi) is a word of a large extent, as before it appeareth. 3. To all things whatsoever: [ Where any thing, ] which words be as general as can be. 4. Not only against the King, his Crown and Dignity, but against the Kingdom also: against the King, his Crown and Regality, or Realm. 5. This Act extendeth not only to procurers, abettors, maintainers, counsellors, &c. which are known words in Law, but to favourers, fautores, which word was largely extended in the Reign of H. 8. Whereby it is to be observed how dangerous it is to bring new or unusual words into any Act of Parliament, especially into such as be so penned: for there it appeareth that Cliff being a Parson of a Church granted to the Cardinal an annuity, so long as he should be Legate, ut decentius & sublimius se gereret in autoritate sua Legantina, which the Cardinal had by Bull, and paid to him ten marks in name of season, and he was adjudged a fautor. But such evasions were found out of this and other Statutes, as were made against usurpations and incroachments upon the good and ancient Common Law, as divers and many Statutes were made from time to time to meet with such evasions, which being many, ( and others which concern the offence of Premunire ) we will but name, and leave the reader to peruse the same at large, wherein ( as we conceive it ) he shall find a great light, by that which hath been said, viz. 25 E. 3. cap. 22. 25 E. 3. Statu. de provisoribus. 38 E. 3. cap. 1, 2, 3, 4. 3 R. 2. cap. 3. 7 R. 2. cap. 12. 12 R. 2. cap. 15. 13 R. 2. Stat. 2. cap. 2. 16 R. 2. cap. 5. 2 H. 4. c. 3 & 4. 6 H. 4. cap. 1. 7 H. 4. cap. 6 & 8. 9 H. 4. cap. 8. 3 H. 5. cap. 4. 24 H. 8. cap. 12. 25 H. 8. cap. 19, 20, 21. 26 H. 8. cap. 15. 28 H. 8. cap. 10. 35 H. 8. cap. 1. Note, Queen Mary repealed

Vide Justice Spilman's Report. Mich. 21 H. 8. Cliffs case.



repealed all offences made to be in the case of Premunire since the first day of the first year of H. 8. but some of them are revived by the statute of 1 El. ca. 1. 8 Mar. ca. 1. But in all Quēn Maries time, the statutes made concerning the offences of Premunire before the reign of H. 8. were neither repealed nor altered, but (as hath been said) allowed of in Quēn Maries time. 1 & 2 Ph. & Mar. ca. 8. 1 El. ca. 1. 5 El. ca. 1. 13 El. cap. 1, 2. 8. 27 El. ca. 2. 21 Jac. ca. 3. •

And where the statute of 25 E. 3. De Provisoribus provideth, that certain offenders against that Act, shall before they be delivered, make full renunciation, &c. because we desire that our student may in all things understand what he reads: It is to be known, that as well before that statute, viz. in the reigns of E. 1. E. 2. as after, the form of renunciation was to this effect. I renounce all the words comprised in the Popes Bull to me made of the Bishoprick of A. (or the like) the which be contrary, or prejudicial to the King our Sovereign Lord, and to his Crown, and of that I put my self humbly in his Grace, praying to have restitution of the temporalities of my said Church, &c. Whereby it may appear what the Law was in that case before 25 E. 3. And albeit these Laws be very severe, especially against the Bulls, &c. of the Pope, and forraign Jurisdiction, and though Quēn Mary restored his Supremacy in such sort as hereafter appeareth, yet would she not repeal the said statutes of Provision and Premunire, but provided that they should stand in force. See the statute of 1 & 2 Ph. & Mar. whereby it is enacted, That whosoever should by any proces obtained out of any Ecclesiastical Court within this Realm, or without, or by pretence of any spiritual Jurisdiction \* or otherwise, contrary to the Laws of this Realm, inquiet, or molest any person, &c. should incur the danger of the Act of Premunire made in the sixteenth year of the reign of King R. 2. &c. And by another branch in the same Act it is enacted, That all Bulls, Dispensations, and priviledges not containing matter contrary, or prejudicial to the authority, dignity or preheminance royal of the Realm, or to the Laws of this Realm now being in force, and not in this present Parliament repealed, may be put in execution. And lastly, by the same Act it is declared and enacted, That neither any thing contained in the body of the said Statute, or in the Preamble thereof, shall be construed, or expounded to diminish, or take away any of the liberties, priviledges, prerogatives, preheminencies, authorities or jurisdictions which were in the Imperial Crown of this Realm, or belonged to the same before the twentieth year of H. 8. and the Popes Holiness to have such authority, preheminance, and jurisdiction, as his Holiness used, or might lawfully have used by authority of his Supremacy the said twentieth year of H. 8. within this Realm of England, without diminution or enlargement of the same, and none other. Whereby it appeareth how careful the State was in Quēn Maries time to preserve the Perogative of the Crown, and the ancient Laws of the Realm, and did at that time so cautiously restore the Supremacy of the Pope, secundum quid, but not simpliciter, and bounded his Supremacy within strait and legal limitations, as by the said Act appeareth.

See the statutes which inflict the punishment of Premunire, viz. 2 R. 2. c. 12. 3 R. 2. ca. 3. 7 R. 2. ca. 12. 24 H. 8. ca. 12. 25 H. 8. ca. 19, 20. 1 El. cap. 1. 26 H. 8. cap. 15. 28 H. 8. ca. 16. 1 & 2 Ph. & Mar. cap. 1. 8 El. cap. 1. 13 El. ca. 2. 8. 39 El. ca. 11. 27 El. ca. 2. See the Fourth part of the Institutes, cap. Chancery, the Articles at large against Cardinal Woolsey. Artic. 7.

We have been the longer concerning cases of Premunire: First, for that they be matters of great weight, and necessary to be known, and we wish that the offence may never be committed. And secondly, for that Master Stanford Stan. pl. cor. 44. f. hath in effect but named a Premunire.

Dier Manuscrip.  
Hil. 1 El. le case  
de Christoforson  
Evesque de Chi-  
chester.

1 & 2 Ph. & Mar.  
ca. 8.

\* Nota.



## CAP. LV. Of Prophecies.

33 H. 8. cap. 14.  
1 E. 6. cap. 12.  
Nota.  
1 Mar. stat. uni-  
cum, Sessione  
prima.  
5 Eliz. cap. 15.  
Mirius imperanti  
melius pareatur.  
\* Nota.  
The like Act was  
made, 3 & 4 E. 6.  
ca. 15. expired.

**P**rophecies upon declaration of Arms, Fields, Names, Cognisances, or Badges, were made felony without the benefit of Clergy: but this Act is twice repealed by general words of all Felonies made by any statute since the first year of H. 8.

In Anno 5 Eliz. a more moderate Statute was made against Prophecies by Writing, Singing, or other open Speech, or Deed, by the occasion of any Arms, Fields, Beasts, Badges, or other like things accustomed in Arms, Cognisances, or Signets; or by reason of any time, year, or day, name, bloodshed or war, \* to the intent thereby to make any rebellion, insurrection, dissention, loss of life, or other disturbance within this Realm, or other the Queens Dominions. For the first offence imprisonment of his body by the space of a year without bail, and forfeit to the Queen and Informer, ten pound. And for the second offence, imprisonment during life without bail, and forfeit to the Queen all his goods and chattels, real and personal: but he must be therfore impeached or accused within six Months next ensuing the offence by him done. A just and necessary limitation, and the rather, for that the offence may be committed by bare words. This offence is to be heard and determined before Justices of Assise, Justices of Oier and Terminer, and Justices of Peace.

See hereafter the Chapter of News, and the Second part of the Institutes, W. 1. cap. 33. He that hath read our Histories shall find, what lamentable and fatal events have fallen out upon vain Prophecies carried out of the inventions of wicked men, pretended to be ancient, but newly framed to deceive true men: and withall, how credulous and inclinable our countrymen in former times to them have been, we will set down the truth concerning the same.

Certain it is, that to foretell of things to come, is a prerogative appropriated to the Holy Ghost, and that the Devil cannot prædicere, foretell of things to come, which notwithstanding, S. Austin did sometime hold that he could. But afterwards justly retracted it in these words, Rem dixi occultissimam audaciore assertione, quam debui, &c. certissimum est Dæmones non præscire.

Now for the predictions and foretellings of the Sibyls being Gentiles, so long before the Incarnation of our Saviour Christ: and more directly and particularly, of those high mysteries of the Incarnation and Passion of Christ, the coming of Antichrist, the subversion of Rome, and the end of the world, they are by the true Prophets of Almighty God, who spake by the Holy Ghost, well discovered: that while the Church was in her Cradle, these predictions were invented and fathered upon the Gentiles; to the intent to make the doctrine of the said high Mysteries of the Gospel the more credible amongst the Gentiles. And if any such predictions had been by the said Sybils, out of question, these great Lights of Nature amongst the Gentiles, Plato, Aristotle, Theophrastus, or some other of those great Philosophers, that with great alacrity dived into the secrets of all kinds of learning, would have found them out, and made some mention of them. But besides the said discovery, such predictions by the Gentiles and Heathen persons are *b* against the Word of God.

Also predictions either of the time of the end of the world, or that it is at hand, is not lawful. For the first, see the first of the Acts, It is not for us to know the times and seasons which the Father hath put in his own power, &c. For the second, see the Second Epistle to the Thessalonians. I beseech you brethren, &c. that you be not shaken in mind, or troubled, &c. as though the day of Christ were at hand, let no man deceive you by any means.

We have the rather said herof thus much, for that we have heard divers men boldly and confidently upon their Numeral calculation to have erred herein.

CAP.

August. in lib.  
Retract.

*a* Casaubone  
Exercit. 1. ad ap-  
paratum Annali-  
um, cap. 10.  
*b* Ephes. c. 3. v. 9.  
Col. cap. 1. v. 26.  
Rom. ca. 26. v. 25.  
*c* Acts ca. 1. v. 7.  
Mat. 24. 36.  
Mark 13. 32.

2 Thess. c. 2. v. 1, 2.



## C A P. LVI.

### Of Approver.

**A** Prover, or Approver, in Latin Probator, is a person indicted of Treason or Felony in prison for the same, and not disabled to accuse: he may *a* upon his arraignment, before any plea pleaded, and before competent Judges *b* confess the Indictment, and take a corporal oath to repeal all Treasons and Felonies, that he knows, and pray a Coroner, before whom he is to enter his appeal or accusation against all those that are participes criminis, or of his society in committing of Treason or Felony contained in the Indictment, those partners being within the Realm: and if upon his appeal *c* all those partners be convicted, the King ex merito iusticiæ, is to pardon him. But it is in the discretion of the Court, either to suffer him to be an Approver, or after his approvement to respite judgment and execution, until he hath convicted all his partners.

¶ **A Prover.** ] *d* He is by Bracton called Probator, by Britton, Provor, by the Mirrour Prover and Approver: and his name putteth him in mind of his duty, viz. to prove and approve his accusation or appeal in every point, for *e* any failer of truth disableth him in omnibus. And as he must affirm the truth and the whole truth, before the Coroner and his appeal: so in the rehearsal of the appeal before the Justices, it must agree with the appeal, 26 Ass. p. 19. & Bracton ubi supra. *f* In one Record I find him called Appellator.

¶ **Person.** ] This extendeth not to a Peer or Lord of Parliament, for it is against Magna Carta. cap. 29. for him to pray a Coroner.

*g* A man attainted of Treason or Felony cannot become an Approver, because (as the book saith) he is Hors de la ley. Also though he be indicted, yet if he be out of prison, he cannot approve.

*h* The Mirrour saith, that Women, Infants, Idiots, Lepers, or Professors in order of Religion, or Clerks, or persons attainted of Felony, or Non compos mentis, cannot be Approvers: and Stanford addeth men above the age of 70, or maimed; because some of them cannot take an oath, and none of them can wage battel.

¶ **Indicted.** ] *i* For in any appeal either by Writ or Will the defendant shall not become an Approver: and before indictment, no person can approve, because if his approvement be false, no judgment (whatsoever he confessed) can be given against him, unless he be indicted, *k* and no judgment can be given against him if his appeal be false, but of the offence contained in the Indictment, and so are the books to be understood.

*l* If one be indicted and approve, if after an appeal be sued against him, the approvement ceaseth.

¶ **Of Treason or Felony.** ] And that is only of that Treason or Felony that is contained in the Indictment, as hath been said. *m* See Trin. 3 H. 4 Rot. 19. Coram Rege Hertford. Probator in duello devicit appellat<sup>r</sup>, de alta proditione, pro quo devictus suspenditur, decapitatur & quarteria sua dividuntur. Et simile ibid. Anglia.

¶ **In prison.** ] *n* Albeit he be indicted, yet if he be at large, and not in prison, he cannot approve, as before is said.

Parl. 28 E. 1. ca. Nora, for confronting.

49 H. 5. cor. 440.

21 E. 3. 18.

19 H. 6. 47.

2 H. 7. 3.

12 E. 4. 10.

3 H. 6. 50, 51.

*b* 1 H. 5. cor. 441.

3 H. 6. 50, 51. in

Bank le roy.

Pasch. 2 H. 4.

coram Rege pl. 6.

*c* 21 H. 6. 29. b.

& 34. b.

*d* Bract. lib. 3.

fo. 122. b. & 152.

&c.

Britton. fo. 7. 11.

17 48.

Mirr. cap. 1. §. 13.

cap. 3. excc. al.

provors, cap. 5.

*e* 25 E. 3. 42.

21 H. 6. 34.

22 E. 3. cor. 460.

26 Ass. p. 19.

*f* Pasch. 2 H. 4.

coram Rege. 6.

*g* 11 Ass. pl. 17.

19 E. 2. cor. 387.

19 E. 3. ibid. 443.

17 E. 3. 13.

21 E. 3. 18.

*h* Mir. ca. 1. §. 13.

Stanf. pl. cor.

140. d.

*i* 43 Ass. 39.

15 E. 3. cor. 113.

11 H. 7. 5.

*k* 25 E. 3. 39.

18 H. 5. cor. 442.

*m* 19 H. 6. 4.

12 E. 4. 10.

6 H. 6. cor. 131.

19 E. 2. cor. 387.

*n* 6 H. 6. ubi sup.

21 E. 3. fo. 18.

V. 3 H. 6. 51, 52.



a Brañ. ubi sup.  
9 H.4.1. 2 H.4.19.  
44 E.3.44.  
Lib.10.fo.76.b.

¶ **Competent Judge.** ] a As Justices of the Kings Bench, Justices of Oier and Terminer, and of Gaol-delivery, but not Justices of Peace, because they have no authority by their Commission to assign a Coroner. And by the same reason the Lord High Steward of England cannot assign a Coroner in case of Treason or Felony.

12 E.4.10.  
21 H.6.34,35.

¶ **Corporal Oath.** ] Though the Oath be general of all Treasons and Felonies, yet in course of law no approbement can be, but of the offence contained in the Indictment, as hath been said. And this Oath and the accusation of himself make his appeal or accusation of another of the same crime, to amount in Law to an Indictment.

40 Aff.39.  
10 E.4.14.

¶ **Particeps criminis.** ] For it cannot be of another Treason or Felony then is contained in the Indictment.

1 E.3.17.  
1 Aff.p.2.

¶ **Within the Realm.** ] For if it be out of the Realm, it wanteth trial, and therefore the accusation or appeal not to be allowed.

26 Aff.19.  
8 H.5. cor.459.  
21 H.6.34.  
12 E.4.10.

¶ **Ex merito justitiæ.** ] And the reason is, for that he riddech the country of wicked and hurtful misdoers: whereby the Kings peace is kept, and the Subject enjoyeth his own in quiet. And therefore the King doth in the mean time give him wages.

Mich. 39 E.3. cor.  
ram Rege Rot.97.  
Suff.

A man became an Approver and appealed five, and every of them joynded battel with him. Et duellum percussum fuit cum omnibus, & Probator devicit omnes quinque in duello, quorum quatuor suspendebantur, & quintus clamabat esse clericum, & allocatur; & Probator perdonatur: so as the approver did and ought to fight in that case with all the appellæ. But if there be two or more approvers against one man of one Felony, and he join battel with them all, and vanquish the first, he is acquitted against the other. Concerning the Proses upon an approbement, and other incidents, you may read in Mr. Justice Stanford, which need not here to be rehearsed.

7 E.3.7.  
11 H.4.91.b  
Of battel see  
more here, Cap.  
Single combat,  
and the second  
part of the Insti-  
tutes, Westm. 1.  
cap.40.  
\* 47 E.3.5.

\* If the appellæ join battel, or plead not guilty, and after the King pardoneth the approver, the appellæ shall be discharged, and shall not be arraigned at the suit of the King.

Stanf. pl.cor.142.

¶ **Convicted.** ] The appellæ may choose either to wage battel with the approver, or to put himself upon the country; and if the appellæ be found guilty by verdict, it serveth as well for the approver, as if he had been overcome by battel. And therefore the Book in 19 H.6.35. is misprinted, or misreported: and the note of Fitzh. in abridging the case, tit. Coron. pl.6. in the end, is against Law. Vid. Rot. Parl. 17 E.3. nu.36.

19 H.6.35. a.  
Rot.Par. 17 E.3.  
nu.36.



## CAP. LVII.

## Of Appeals.

**O**F Appeals we have spoken in the First and second part of the Institutes, and you may read thereof in my Reports, Lib. 4. f. 40, 41, 42; &c lib. 5. f. 105. 111. lib. 6. f. 44, 80. lib. 7. f. 13, 30. lib. 9. f. 13, 119. Whereunto we will add a *b* case which was adjudged in an appeal, where the case, as touching the point of the appeal, was thus. Thomas Burghe, brother and heir of Henry Burghe brought an appeal of murder against Thomas Holcroft, of the death of the said Henry: The defendant pleaded, that before the Coroner he was indicted of Manslaughter, and before Commissioners of Oier and Terminer, he was upon that Indictment arraigned, and confessed the Indictment, and prayed his Clergy, and thereupon was entred Curia advisare vult, and concluded, and demanded judgment, if that appeal the plaintiff against him ought to maintain: whereupon the plaintiff demurred in Law. And in this case three points were adjudged by Sir Christopher Wray, Sir Thomas Gawdie and the whole Court.

First, That the matter of the War had been a good War of the appeal by the Common Law, as well as if the Clergy had been allowed: for that the defendant upon his confession of the Indictment had prayed his Clergy, which the Court ought to have granted, and the deferring of the Court to be advised, ought not to prejudice the party defendant, albeit the appeal was commenced before the allowance of it.

The Second point adjudged was, That this case was out of the Statute of 3 H. 7. for that the words of that Act are.

If it fortune that the same Felons and Murderers, and Accessories so arraigned, or any of them to be acquitted, or the principal of the said felony, or any of them to be attainted, the wife or next heir of him so slain, &c. may have their appeal of the same death and murder against the person so acquitted, or against the said principals so attainted, if they be alive, and that the benefit of his Clergy thereof before be not had.

And in this case the defendant Holcroft, was neither acquitted nor attainted, but convicted by confession, and the benefit of Clergy prayed, as is aforesaid. So as the Statute being penal concerning the life of man, and made in restraint of the Common Law, was not to be taken by equity, but is casus omissus, and left to the Common Law.

As to the third it was objected, That every plea ought to have an apt conclusion, and that the conclusion in this case ought to have been, Et petit iudiciū si prædict. Thomas Holcroft iterum de eadem morte, de qua semel convictus fuit, respondere compelli debeat. But it was adjudged that either of both conclusions was sufficient in Law: and therefore that exception was disallowed by the rule of the Court.

Nota, The ancient Law was, that when a man had judgment to be hanged in an appeal of death, that the wife, and all the blood of the party slain should draw the defendant to execution. And Gascoigne said, Idint fuit in diebus nostris.

Richardus de Crek appellat quinque pro feloniam, & offert diffratocinare per corpus suum contra quemlibet eorum separatim. Ipsi petunt se allocari, quod ubi appellans dicit in appello suo, quod ipsi fregerunt ostium Bracini, & non specificat ex parte domus illius prædictum ostium scitum fuit, & petunt iudiciū. Et Joh. Wanton unus defendent' defendit feloniam, & totum, & paratus est defendere per corpus

First part of the Institutes. §. 189, 500, 501. Second part of the Institutes, in Mag. Cart. c. 34. W. 1. c. 14. fol. 450. Cust. de Norm. cap. 68. b Pasch 20 Eliz. in the Kings Bench. Tho. Holcrofts case, and after, viz. Mich. 33 & 34 Eliz. between Kat. Wrote, late the wife of Ro. Wrote Pl. in an Appeal against Th. Wigg's def. coram Rege, for the death of her husband, resolved again accordingly.

3 H. 7. cap. 1.

11 H. 4. ii. Pl. com. 306. b.

Trin. 10 E. 1. in Banco, Rot. 30. Norff.



Nota how the conclusion of the appeal of felony ought to be, when the Plain if is mayhemed and cannot make trial by batrail.

\* See before c.1. high treason f. 6. 1 H. 4. cap. 14. Glanv. lib. 14. c. 1. Bracton lib. 3. fol. 118, 119. Britton cap. 3. & 29. Fleta lib. 1. cap. 21. The Mirror cap. 2. §. 11. Pat. 25 E. 3. part. 1. m. 16. Mich. 4 H. 4. Coram Rege Rot. 22. & c. 8 H. 6. cap. 10. F. N. B. 115. Lib. Intrat. Rast. fol. 122.

corpus suum sicut curia consideravit. Ricus dicit quod non potest pugnare contra prædictum Johannem, eo quod ipse mahematus est in humero suo dextro. Et prædictus Johannes petit judicium deficut prædictus Ricus appellando ipsum optulit distracionare prædictum Robertum versus ipsum tanquam felonem prout cur consider per corpus suum, & nullam fecit mentionem de aliquo Mahemio, unde petit judicium de appello isto. Et ideo Considerat est tam ad calumpniam prædicti Henr. & aliorum, quam prædicti Johannis, quod appellum ejus nullum. Set pro rege inquiratur rei veritas, &c.

\* There lay an appeal of high treason by the Common Law either in Parliament befoze the Statute in 1 H. 4. c. 14. or in such of the Kings Courts as have jurisdiction thereof triable by battail or verdict: and this appeareth by all our ancient Authoꝝ, and divers records, and see in Bracton f. 119. a. What pleas the Defendant in the appeal of treason may have, to disabie the Plaintiff to maintain his appeal, see Fleta ubi supra, & Britton ubi supra.

## CAP. LVIII.

### Of Treasure trove.

### Thesaurus inventus.

Custum de Nor. cap. 18.

**T**reasure trove is when any gold or silver, in coin, plate or bullion hath been of ancient time hidden, wheresoever it be found, whereof no person can prove any property, it doth belong to the King, or to some Lord or other by the Kings grant, or prescription.

The reason wherefore it belongeth to the King, is a rule of the Common Law; That such goods whereof no person can claim property belong to the King, as wrecks, strays, &c. Quod non capit Christus, capit Fiscus. It is anciently called \* Fyndaringa, of finding the treasure. And now let us peruse this description.

\* Inter leges l. 1. cap. 11.

¶ Gold or silver. ] For if it be of any other metal, it is no treasure: and if it be no treasure, it belongs not to the King, for it must be Treasure trove.

Pl.Com. In case de Mines per rotum. Vid. Bract. l. 2. fol. 222. Auri fodina, & argenti fodina. Fleta lib. 4. c. 19. Rot. Parl. 3 R. 2. nu 42. 27 Aff. p. 19 a Bract. l. 1. fol. 10. li. 3. 120.

It is to be observed, that veins of gold and silver in the grounds of subjects belong to the King by his Prerogative, for they are Royal mines, but not of any other metal whatsoever in subjects grounds.

Britton fo. 3. b. 7. b. 26. b. 71. b. Mir. c. 1. §. 3. & §. 13. c. 3. §. isto. Glanv. l. 1. c. 1. lib. 14. c. 2.

¶ Wheresoever. ] a Whether it be of ancient time hidden in the ground, or in the roof, or walls, or other part of a castle, b house, building, ruins, or elsewhere, so as the owner cannot be known.

b In bundel Inquisit. 22 E. 3. in Abbatia Sanctæ Mariæ Eborum. Bract. ubi supra. Non refert in quo loco hujusmodi Thesaurus inveniatur. c 22 H. 6. Cor. 446. d Bract. Ubi supra, and the other ancient Authors agree thereunto. e Glanv. l. 1. c. 1. l. 14. c. 2. 8 E. 2. Cor. 436. 22 E. 3. ibid. 241.

¶ Whereof no person can prove any property. ] For it is a certain rule, c Quod thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum.

¶ Of ancient time hidden. ] d Est autem thesaurus vetus depositio pecuniæ, &c. cujus non extat modo memoria, adeo ut jam dominum non habeat.

¶ Belong to the King. ] e Where of ancient time it belonged to the



finder, as by the said ancient Authors it appeareth. And yet I find that before the Conquest, *Theauri de terra domini regis sunt, nisi in Ecclesia, vel Coemeterio inveniantur; & licet ibi inveniantur aurum, regis est, & medietas argenti est medietas Ecclesiæ, ubi inventum fuerit, quæcunque ipsa fuerit, vel dives, vel pauper.*

¶ By the Kings grant or prescription. ] 21 H. 6. tit. Prescription. 4. 22 E. 3. Cor. 241. 1 H. 7. 33. 9 H. 7. 20. 46 E. 3. 16. Stanf. pl. Cor. 39. b. l. 5. fol. 109. b.

¶ The punishment of him that concealeth, &c. it. ] It appeareth by Glanvil, and Bracton also, that *occultatio thesauri inventi fraudulosa*, was such an offence, as was punished by death. But it hath been resolved, that the punishment for concealment of Treasure trove, is by fine and imprisonment, and not \* of life and member.

Glanvil ubi supra. Bracton and the other Authors, ubi supra.

\* 22 Ass. p. 99.

¶ To whom the charge thereof belongeth. ] It belongeth to the Coroner, as appeareth by the Statute *de officio Coronatoris*, Anno 4 E. 1. The ancient Authors, ubi supra, agree hereunto.

## C A P. LIX.

### Of VVreck.

SEE the Second part of the Institutes W. 1. cap. 2. and the exposition upon the same.

## C A P. LX.

### Of false tokens, or letters in other mens names.

IF any person fallily and deceitfully obtain into his hands any Money, Goods, Chattels, Jewels, or other things of any person or persons, by colour or means of any false or privy tokens, or counterfeit letters made in any other mans name, &c. he shall suffer such correction by punishment of his body, setting upon the pillory, or other corporal pain (except pains of death) as shall be to him adjudged by the person and persons before whom he shall be convicted, with a saving to the party grieved by such deceit, such remedy by way of Action, or otherwise, as he might have had by the Common Law.

33 H. 8. cap. 10.

Here it is to be observed, that upon this Statute, for this offence the offender cannot be fined, but corporal pain only inflicted.



## CAP. LXI.

## Of Theftbote.

Stat. Wall. An. 12  
E.1. Vet. Mag. Cart.  
part 2. f. 6. See  
Rot. clauf. An. 1 E.  
1. m. 7. 42 Aff. p. 5.  
Mir. c. 2. §. 12. 3 E.  
3. Cor. 353. Stanf.  
Pl. Coron. 40. b.  
42 Aff. ubi supra.

**T**heftbote (described by Act of Parliament) est emenda furti capta sine consideratione Curæ domini regis: and so much the word signifieth, bote being taken for amends; theftbote, that is, amends for theft.

This offence is more then misprision of felony, for that is not a concealment of his bare knowledge only: but Theftbote is when the owner not only knows of the felony, but taketh of the thief his goods again, or amends for the same to favour or maintain him, that is, not to prosecute him, to the intent he may escape: but in that case, if he receive the thief himself, and aid and maintain him in his felony, then is he accessory to the felony. And so note a diversity, quando proprietarius recepit latrocinium, & quando latorem. But if a man take his goods again that were stolen, it is no offence, unless he favour the thief, as is aforesaid.

3 E. 3. Cor. 353.

The punishment of Theftbote is ransom and imprisonment: and seeing the punishment of Theftbote, which is greater then concealment of felony, is but ransom and imprisonment, it standeth with reason, that the punishment of a misprision of felony should be but fine and imprisonment. Theftbote is sometimes taken pro ipso latrocinio, for the thing it self stolen from you.

<sup>a</sup> See before in the chapter of Misprision of treason. c. 3. Mir. cap. 1. §. 17. Britton f. 33.  
<sup>b</sup> That is stoln cloth.

You shall read in ancient Authors of Redoubbers, Addoubors, derived of the French word addoubeur, they are in Law patchers, botchers, or mender: of apparel that take <sup>b</sup> theftbote of cloth (and change it into another fashion) and are dwelling out of Burghs and Cities; because in those days Burghs and Cities were so well governed, as such offenders were soon discovered: for they were not then commended, for that they were populous, but for that the Governors were provident in preventing of offences.

## CAP. LXII.

## Of Indictments.

See the 1. part of the Institutes, Sect. 194, 195.

**C**oncerning Indictment we have spoken somewhat in the First part of the Institutes, Sect. 194. 208. And you may read in my Reports many resolutions concerning Indictments, viz. Lib. 4. f. 40, 41, 42. &c. lib. 5. f. 120, 121, 122, 123. lib. 7. f. 5, 6, 10. l. 8. f. 57. 36, 37. l. 9. 62, 63. 116. 118.

Holcrofts case.  
Artic. super Cart.  
cap. 10.  
The same was again resolved in Wrots case, ubi supra.

We will add one point adjudged in the case between Burgh and Holcraft before mentioned in the Chapter, of Appeals, which was, that where it is provided by the Statute de Artic. super Cartas cap. 3. En casé del mort del home (deins le verge) ou office del Coroner appent as views, & enquests de ceo faire, soit maunde al Coroner del pais que ensemblement ove le Coroner del hostel le Roy face l'office que appent, &c. And in that case one man was Coroner both of the Kings house and of the County, and the Indictment of manslaughter was taken before him as Coroner both of the Kings house, and of the County. And it was adjudged that the Indictment was good, because the mischief expressed in the Statute was remedied, as well when both offices was in one person, as when they were in divers: and therefore in this case the rule did hold, Quando duo jura concurrunt in una persona, æquam est, ac si esset in diversis.



Richard Weston Peoman, late servant of Sir Gervase Elwys, Lieutenant of the Tower, and under the Lieutenant, Keeper of Sir Thomas Overbury then prisoner in the Tower, was indicted: For that he the said Richard the 9 day of May An. 11. Ja. Regis, in the Tower of London, gave to the said Sir Tho. Overbury poison called Roseacre in broth, which he the said Sir Thomas received. Et ut idem Rich. Weston præfatum Tho. Overbury magis celeriter interficeret & murdraret, 1 Junii Anno 11 Ja. Regis supradict. gave to him another poison called White Arsenick, &c. and that 10 Junii An. 11. suprad. gave to him a poison called Mercury Sublimat in Tarts, ut præd. Th. Overbury magis celeriter interficeret & murdraret: and that a person unknown in the presence of the said Richard Weston, and by his commandment and procurement, the 14 day of Septemb. anno 11 supradict. gave to the said Sir Thomas a glyster mixt with poison called Mercury sublimat, ut prædictum Thomam magis celeriter interficeret & murdraret. Et prædictus Thomas Overbury de sepealibus venenis prædictis, & operationibus inde, à prædictis sepealibus temporibus, &c. graviter languebat usque ad 15 diem Septemb. Anno 11. supradicto, quo die dictus Thomas de prædictis sepealibus venenis obiit venenatus, &c. And albeit it did not appear of which of the said poisons he died, yet it was resolved by all the Judges of the Kings Bench, that the Indictment was good; for the substance of the Indictment was, whether he was poisoned or no. And upon the evidence it appeared, that Weston within the time aforesaid had given unto Sir Thomas Overbury divers other poisons, as namely the powder of Diamonds, Cantharides, Lapis Causticus, and powder of Spiders, and Aqua fortis in a Glyster. And it was resolved by all the said Judges, that albeit these said poisons were not contained in the Indictment, yet the evidence of giving them was sufficient to maintain the Indictment: for the substance of the Indictment was (as befoze is laid) whether he were poisoned or no. But when the cause of the murder is laid in the Indictment to be by poison, no evidence can be given of another cause, as by weapon, burning, drowning, or other cause, because they be distinct and severall causes: but if the murder be laid by one kind of weapon, as by a Sword; either Dagger, Styletto, or other like weapon is sufficient evidence, because they be all under one Classis or cause. And afterwards, Ann Turner, Sir Gervase Elwys, and Richard Franklyn a Physitian, (purveyors of the poisons) were indicted as accessories befoze the fact done: And it was resolved by all the said Judges, that either the proofs of the poisons contained in the Indictment, or of any other poison, were sufficient to prove them accessories: for the substance of the Indictment of them as accessories was, whether they did procure Weston to poison Sir Thomas Overbury: and because that not only Ann Turner and Richard Franklyn, but some of the degree of Nobility were indicted as accessories in another County, viz. in the County of Midd. divers notable points were resolved upon the Statute of 2 E. 6. First, If the Accessory be in the County of Midd. where the Kings Bench is, and the principal did the Felony, &c. in another County, that the Court of the Kings Bench is within the words of that Act, viz. (and that the Justices of Gaol delivery, or Oier and Terminer, or two of them, &c.) for the causes and reasons given in the Lord Zanchers case Lib. 9. fo. 117, 118. &c. Secondly, if the Indictment be taken in the Kings Bench, then the Justices shall not write in their own names, quia placita sunt coram Rege. Thirdly, divers presidents were shewed where the Accessory was in the County of Midd. where the Kings Bench sat, and the principal was attainted in another County, that the Justices of the Kings Bench have removed the Record of the attainder of the principal befoze them by Certiorari, and so it was done in the Lord Zanchers case, ubi supra. The like president was shewed in a case where the principal was attainted in the County of Oxon, and the Accessory was in Midd. and the Kings Bench sitting there, the Justices of the same Court removed the attainder befoze them by Certiorari. Fourthly, it was resolved, that the Lord Steward of England, who is a Judge in case of High Treason, or Felony committed by any of the Pærs of the Realm, is within these words, Justices of Gaol-del-

Sir Tho. Overburys case.  
Mich. 13. Jac.  
See before cap. 7.  
Of murder more of this case.

Vide li 9. fo. 67.  
Mackallies case  
Acc.

2 E. 6 cap. 24.



39 H. 6. 42.  
23 Aff. p. 7.

livery, or Oier and Terminer, because he is a Justice of Oier and Terminer, for his authority is by Commission, and the words of his Commission be after divers recitals, Et superinde, audiend', examinand', & respondere compellend', & sine debit' terminand' : so as he hath power to hear and determine. And where the words be [or any two of them] that is to be intended, where there be two or more Justices ; and yet where there is but one, it extendeth to him. As the Statute of Merton cap. 3. power being given to the Sheriff in case of Redisseisin, the words be, Assumptis tecum Coronatoribus placitorum Coronæ, &c. in the Plural number. And yet where there is but one Coroner in the County the Statute extends thereunto, and the Sheriff shall take that one. Also the words of the Statute are further, That then the Justices of Gaol delivery or of Oier and Terminer, or other there authorized : within which words, [or other there authorized] the Lord Steward is included. Fifthly, if the Record of the attainder were by Writ of Certiorari removed out of London into the Kings Bench, then there arose another doubt upon the said Statute, if afterwards any proceeding should be had against any Peer, for that the words of the Statute be, The Justices, &c. shall write to the Custos Rotulorum, or Keeper of the Record where such principal shall hereafter be attainted ; and the attainder in this case was in London, and the Kings Bench was in Middlesex : so as if the Record should be removed into the Kings Bench in Middlesex, the Record should not be where the attainder was had ; and consequently, the Lord Steward could not write to the Kings Bench. And therefore to prevent all questions, it was resolved, That in this case of the Lord Steward, no Certiorari should be granted, but a special Writ should be directed according to the words of the said Act to the Commissioners of Oier and Terminer in London, to certify whether the principal was convicted or acquitted : and they made a particular Certificate accordingly, so as the Record of the attainder of the principal, did notwithstanding that Certificate, remain with the Commissioners of Oier and Terminer in London : so as if any further proceeding should be had, the Lord Steward might write to them, as after he did in the case of R. Earl of S. and F. his Wife.

And it is to be observed, that the ancient wall of London (a mention whereof doth yet remain) extendeth through the Tower of London : and all that which is on the West part of the Wall, is within the City of London, viz. in the Parish of All-Saints Barking, in the Ward of the Tower of London : and all that is on the East part of the Wall is in the County of Middlesex ; and the Chamber of Sir Thomas Overbury was within the Tower on the West part of the said Wall, and therefore Weston was tried within the City of London.

And where it is often said in many *a* Acts of Parliament, *b* Records, and *c* Book cases, that the King cannot put any man to answer, but he must be apprised by Indictment, Presentment, or other matter of Record : True it is, in Pleas of the Crown or other common offences, Rulances, &c. principally concerning others, or the publick, there the King by Law must be apprised by Indictment, Presentment, or other matter of Record ; but the King may have an Action for such wrong as is done to himself, and whereof none other can have any Action but the King, without being apprised by Indictment, Presentment, or other matter of Record, as *a* *d* Quare impedit, *e* Quare incumbavit, *a* Writ of *f* Attaint, *g* of Debt, *h* Detinue of Ward, *i* Elcheat, *k* Scire fac. pur replear patent, &c.

*a* Mag. cart. ca. 29.  
*5* E. 3. cap.  
*25* E. 3. c. 4. stat. 5.  
*28* E. 3. ca. 3.  
*37* E. 3. cap. 18.  
*38* E. 3. cap. 9.  
*42* E. 3. cap. 3.  
*6* Rot. claus.  
*18* H. 3. m.  
Rot. Parl. 15 E. 3.  
nu. 9, 10, & 15.  
*42* E. 3. nu. 29.  
Sir John A Lees  
case.

*17* R. 2. nu. 37. *2* H. 4. nu. 60. *c* *7* E. 3. fo. 26. 50. *Vide* *6* E. 3. fo. 33. & *8* E. 3. 30. *26* E. 3. 74. tit. rescous *21* E. 3. 32. per Knivet. *2* E. 3. fo. 7. John de Britains case. *3* E. 3. 19. *45* E. 3. Decies tantum *12*. *d* *5* E. 2. Quar Imp. 167. *33* E. 3. Br'e 916. *e* *17* E. 3. 50. 74. F.N.B. 48. f. 13 E. 3. Jurisd. 23. *f* *42* E. 3. 26. F.N.B. 107. *D* *g* *19* H. 6. 47. *34* H. 6. 3. &c. *h* *39* H. 6. 26. *1* H. 4. 1. *15* E. 3. Corody 4. *i* Regist. fo. 165. a. F.N.B. fo. 7. b. *21* H. 3. Br'e 882. Britton fo. 28. b. cap. 18. *k* *16* E. 3. Br'e 651.



## CAP. LXIII.

## Of Council Learned in Pleas of the Crown.

**W**here any person is indicted of Treason or Felony, and pleadeth to the Treason or Felony, not guilty, which goeth to the fact best known to the party; it is holden that the party in that case shall have no council to give in evidence, or alledge any matter for him: but for as much as ex facto jus oritur, it is necessary to be explained, what matters upon his arraignment, or after not guilty pleaded, he may alledge for his defence, and pray council learned to utter the same in form of Law.

And first upon the arraignment what advantage he may take in case of High Treason by the Common Law. If it be for compassing the death of the King, he may alledge, that in the Indictment there is no such overt or open Act set down in particular, as is sufficient in Law, or the like. For it is to be observed, that in no case the party arraigned of Treason or Felony, can pray council learned generally, but must shew some cause.

Secondly, in case of High Treason by force of any statute, he may alledge, that the Indictment being grounded upon a Statute, the Statute is either mistaken or not pursued.

Thirdly, of what matters he may take advantage equally concerning them both. He may alledge, that there was not at the time of the Indictment of High Treason, two lawful accusers, that is, two lawful witnesses.

Fourthly, of what matters he may generally take advantage in all cases of Treason and Felony. He may alledge, that the offence is not certainly alledged in respect of the matter, time, and place, or that he is not rightly named, or have not a right addition, or that the offences were done before the last general pardon.

Fifthly, after he hath pleaded not guilty, what advantage he may take upon the evidence: He may alledge, that he ought to have two lawful witnesses in case of High Treason, to prove the fact against him.

Sixthly, he may take advantage in arrest of Judgment, if the verdict be found against him, that the trial came not out of the right place: as it fell out in Arundels case convicted by a Jury of wilful murder; he informed the Court, that the Jury that tried him came out of a wrong place, and thereupon he had Council Learned assigned him; who indeed found, that the Venire facias was misarrayed, and the Court thereof by the Council being informed, judgment was stayed. And that the prisoner may alledge these or the like matters, it is evident: because for every matter in Law arising upon the fact, the prisoner shall have Council learned assigned him. Also it is lawful for any man that is in Court, to inform the Court of any of these matters, lest the Court should err, and the prisoner unjustly for his life proceeded with. And the reason whereof regularly in case of Treason and Felony, when the party pleads not guilty, he was to have no Counsel, was for two causes. First, for that in case of life, the evidence to convince him should be so manifest, as it could not be contradicted. Secondly, the Court ought to see, that the Indictment, Trial, and other Proceedings, be good and sufficient in Law; otherwise they should by their erroneous judgment taint the prisoner unjustly.

Robert Chertford counselled the Prior of the Priory of Bingham in Norfolk, that John of Leicester the Kings Serjeant at Arms, coming to the Priory with the Kings Writ of Privy Seal, should not be admitted to the Priory: for which counsel he was indicted in the Kings Bench, and depending the Proces upon the Indictment, the King doth pardon him: and in the Pardon is contained a Superfedeas to the Justices, commanding them to proceed no further.

See before cap. 2.  
Perit Treason.  
fo. 29. 34.  
9 E. 4. 22.  
Stanf pl cor.  
151. b. otherwise  
it is in an appeal  
which is the suit  
of the party.

1.

1 H. 7. 22.

2.

3.

4.

5.

6.

Lib. 5. fo. 14.  
Arundels case;

9 E. 4. 22.

Stanf. ubi sup.  
7 H. 4. 34. & c.  
See before fo. 29.

Rot. clauf.  
14 E. 2. 17. 27.  
Octob.



## C A P. LXIV.

## Of Principal and Accessory.

**A**lbeit Justice Stanford hath well collected the Books concerning Principal and Accessory, yet diversa desiderantur: and necessary it is, that some things touching the same should be added, which are very necessary to be known.

It is a sure Rule in Law, that In alta proditione nullus potest esse accessorius, sed principalis solummodo. This rule being well understood, will open the reason of divers cases, which yet are involved in darkness.

High Treason is either by the Common Law, or by Act of Parliament: we will set down examples (which ever do illustrate) of both.

Mich. 12 & 13.  
Eliz. 296. Dier,  
Coniers case.

A. doth counterfeit the Kings Coin, viz. Shillings, and C. knowing the same doth receive A. and comfort and aide him: this counterfeiting is High Treason by the Common Law in A. as hath been said: and yet it hath been holden that in this case C. hath not committed Treason: for say they, in case of Felony, a receiver of a Felon after the Felony done, knowing him to be a Felon, is no principal, but an accessory; and for that there is no accessory in Treason, therefore C. in the case before committeth no Treason; for then in judgment of Law he must be a counterfeiter of the Kings Coin within our Statute of 25 E.3. which he is not: and therefore they say, this is Casus omissus, and not within any of the Classes or Heads of the said Act of 25 E.3. But all agree, that procurers of such Treason to be done before the fact done, if after the fact be done accordingly, in case of Treason, are principals, for that they are participes criminis in the very act of counterfeiting.

a 19 H.6.47.  
3 H.7.10.  
Stanf. fo.3. See  
before cap. Treason.  
Verb. Si  
home counterface  
le grand Seale.  
b Pasch. 4 Jac. A-  
bingdons case re-  
solved by the  
Justices.  
c M. 12 & 13 El.  
ubi supra.  
See before ca.3.  
Of Misprision of  
Treason.  
d 7 H.4.27.  
21 E.4.71.  
13 H.7.10.  
Pl.com.  
Lib.4.fo.42. in  
Heydons case.  
Lib.9. fo.67.  
Mackallies case.  
& Lib.11.fo.5.  
e Lib 4.fo.44.  
Vauxes case.  
Pl. com.fo.474.  
Saunders case.  
Lib.9.81. Agnes  
Gores case.  
See Pasch.32 E.3.  
coram Rege Rot.  
62. Ph. Cliftons  
case.  
f 25 E.3.39.b.  
cor. 26.  
26 Ass.47.  
9 H.4.1. 7 H.6.42.

a But saving reformation we hold, that if any man committeth High Treason, and thereby becometh a Traitor, if any other man knowing him to be a Traitor, doth receive, comfort, and aid him, he is guilty of Treason, for that there be no accessories in High Treason. b And so it was resolved in the case of Abingdon, who received, comforted, and aided Henry Garnet Superior of the Jesuits, knowing him to be guilty of the Powder Treason, and accordingly Abingdon was indicted and attainted of High Treason.

c And where it is said, that the said offence in Conyers case was misprision of Treason, that cannot be, because there was a consent, and not a concealment only: otherwise, High Treason being the highest offence should have more favour then Felony: for the receiver and comforter in case of Felony is punished by death, and so is not he that committeth misprision of Treason. And lastly, this is no new Treason, but a partaking and a maintaining of the old.

In case of Felony there are Principals and Accessories, and Accessories be of two sorts, either before the offence be committed, or after. See the Second part of the Institutes, W. 1. cap. 14. And concerning this, there be also certain Rules. d Nullus dicitur felo principalis, nisi actor, aut qui praesens est abettans, aut auxilians actorem ad feloniam faciendam. But this Rule hath his exception: for e in case of poisoning, if one layeth poison for one, or infuse it into Broth, or the like, albeit he be not present when the same is taken; and either the party intended, or any other is poisoned, yet is he a principal: and in that case, both the principal, and procurer, or accessory may be absent. See the Books aforesaid for accessories before the Felony committed, and where and in what manner the procurement shall be laid in Law to be pursued: the learning whereof is so plainly set down, as the same need not herein to be repeated. f Nullus dicitur

receptavit



receptavit & confortavit. *a* And therefore if a man write Letters for his deliverance, or in favour of him, or the like; he is no accessory, for that he received not the felon.

*b* A Vicar, which instructed an Approver which could not read, whilst he was in prison, to read, whereby he escaped, was adjudged not accessory to the felony.

Catlin and Browne Justices of Assise in the County of Suffolk put this case to all the Judges. *c* A man committed felony in the County of Suffolk, for which he was committed to the Gaol, and R. an Atturney advised the friends of the felon to perswade the witnesses not to appear to give evidence against him, which was done accordingly. And it was resolved, that neither the friends nor the Attorney were accessories to the felony, but that it was a great contempt and misprifion, for which they might be fined and imprisoned.

*d* The accessory cannot be guilty, of petit treason, where the principal is guilty but of Murder. For Accessorius sequitur naturam sui principalis.

*e* If divers commit any murder, or other felony, one man may be both principal and accessory to the other.

*f* See before cap. 11 & 12 El. the case of Roberts the Attorney.

*g* See before cap. petit treason.

*h* 7 H. 4. 27.

*i* 2 H. 4. 16.

See before cap. Clergy, that if the principal before attainder hath his Clergy, the accessory is discharged. And note generally, where the principal before attainder is pardoned, or his life otherwise saved, the accessory is discharged.

## CAP. LXV.

### Of Misprifions divers and severall: and first of Misprifion of Felony, &c.

OF Misprifion of treason we have already spoken, and of the Etymology of the word. It remaineth now that we speak of other Misprifions.

Misprifion is twofold: one is Crimen omissionis, of omission, as in concealment, or not discovery of treason or felony: another is Crimen commissionis, of commission, as in committing some heynous offence under the degree of felony.

Of misprifion is of two sorts, viz. Passive, and Active: Passive is of the nature of concealment, whereof some be by the Common Law, and some by Statute. By the Common Law, as Passive misprifion, that is concealment of High Treason, whereof we have spoken; and Passive Misprifion, that is concealment of felony, whereof we are now in this Chapter to speak: Some by Statute: as if any be moved to make commotion or unlawful assembly, and do not within 24 hours declare the same to a Justice of Peace, Sheriff, Major, or Bailiff, &c. Concealment by Juries. 3 H. 7. c. 1. 33 H. 8. c. 6, &c.

Now are we to speak of concealment or not discovery of felony. As in case of High Treason, whether the treason be by the Common Law, or Statute, the concealment of it is misprifion of treason. So in case of felony, whether the felony be by the Common Law, or by Statute, the concealment of it is misprifion of felony.

If any be present when a man is slain, and omit to apprehend the slayer, it is a misprifion, and shall be punished by fine and imprisonment.

And as the Concealment of High Treason is higher by many degrees then the concealment of felony, so the punishment for the concealment of the greater is heavier then of the lesser, and yet the concealment of felonies in Sheriffs, or Bailiffs of liberties is more severely punished then in others, viz. by imprisonment by one year, and ransom at the will of the King. From which punishment

*a* 25 Ass. ubi sup.

*b* Mic. 7 R. 2. coram Rege Rot. 23. Cant. 7 H. 4. 27.

*c* Mic. 11 & 12 El. the case of Roberts the Attorney.

*d* See before cap. petit treason.

*e* 7 H. 4. 27.

*f* 2 H. 4. 16.

*g* Mar. 1. Parl. c. 12.  
*h* Eliz. cap. 17.  
See the second part of the Institutes. W. 1. cap. 9.

*i* 8 E. 2. Cor. 394.

W. 1. c. 9. See the exposition thereof ubi sup.



nishment if any will save himself he must follow the advice of Bracton, to discover it to the King, or to some Judge or Magistrate, that for administration of justice supplieth his place, with all speed that he can.

Bract. 13. f. 118. a.

Non enim debet morari in uno loco per duas noctes, vel per duos dies nec debet ad aliqua negotia, quamvis urgentissima, se convertere, quia vix permittitur ei ut retrospiciat.

And this is intended of a concealment, or not discovery of his meer knowledge: For if in case of High treason, he that knoweth it, before it be done and assenteth to it, is particeps criminis, and guilty of treason: and in case of felony, he that receiveth the thief and assenteth to it is accessory.

See before the  
chapt. of Mifprifion  
of treason, fol.  
36. and of Princip-  
pal and Accessory  
fol. 148.

\* Ecclesiastes c. 10.  
v. 20.

See before in the Chapter of Mifprifion of treason, that every treason and felony doth include in it mifprifion of treason and felony. See the Statute of 23 El. c. 1. Of mifprifion, that is, crimen commissionis.

Compassings, or imaginations against the King, by word, without an overt act, is a high mifprifion, as before is said. \* In cogitatione tua ne detrahas Regi, &c. quia aves coeli portabunt vocem tuam, & qui habet pennas annuntiabit sententiam.

a See the 2. part of  
the Institutes W.  
1. c. 33. 25 E. 3. c. 1.  
It is high treason  
to kill any of  
them in their pla-  
ces.

b 22 E. 3. 13. 19 E 3  
judgment 174.

Mich 6 E. 3. Coram  
Rege Rot. 55 Ebo-  
rum. 41 E. 3. Cor.  
280. Nota the for-  
feiture of his lands  
is but during his  
life. 41 E. 3. 25.

c Int. leges Alve-  
redi cap. 34.

3 El. Dier 188.

2 Ja. Bellinghams  
case Coram rege  
with his elbow  
and shoulder.

d 33 H. 8. cap. 12.

a If any man in Westminster Hall, or in any other place, sitting the Courts of Chancery, the Exchequer, the Kings Bench, the Common Bench, or before Justices of Assise, or Justices of Oier and Terminer, (which Courts are mentioned in the Statute of 25 E. 3. De prodicionibus) shall draw a weapon upon any Judge, or Justice, though he strike not; this is a great mifprifion, b for the which he shall lose his right hand, and forfeit his lands and goods, and his body to perpetual imprisonment: the reason hereof is, because it tendeth ad impedimentum Legis terræ. c So it is, if in Westminster Hall or any other place, sitting the said Courts there, or before Justices of Assise, or Oier and Terminer, and within the view of the same, a man doth strike a Juror, or any other with weapon, hand, shoulder, elbow, or foot, he shall have the like punishment; but in that case, if he make an assault, and strike not, the offender shall not have the like punishment.

d If any strike in the Kings Palace, where the Kings royal Person resideth, he shall not lose his right hand, unless he draw blood; but if he draw blood, then his right hand shall be stricken off, he perpetually imprisoned, and fined and ransomed.

Note the Law makes a great difference between stroke or blow, in or before any of the said Courts of Justice, where the King is representatively present, and the Kings Court, where his royal Person resideth. For in the Kings house (as hath been said) blood must be drawn, which needeth not in or before the Courts of Justice, but a stroke only sufficeth. Again, the punishment is more severe in the one case, then in the other: such honour the Law attributeth to Courts of Justice, when the Judges or Justices are doing of that which to Justice appertaineth: and the reason is, Quia Justitia firmatur Solium.

But note, that by the ancient Laws of this Realm, striking only in the Kings Court was punished by death. Vide Lambert inter leges Inæ cap. 6. Si quis in Regia pugnarit, rebus suis omnibus mulctator, & sitne morte etiam plectendus, Regis arbitrium & jus esto. Inter leges Canuti cap. 56. Si quis in Regia dimicarit, capitale esto, &c. Inter leges Alveredi cap. 7. Qui in Regia dimicarit, ferrumve distrinxarit, capitor, & regem penes arbitriam vitæ necisque ejus esto, &c.

e Mich. 15 El. in  
the case of Peter  
Burchet Esquire  
of the middle  
Temple.

e Peter Burchet prisoner in the Tower, stroke within the Tower John Longworth his Keeper (who stood in a window reading of the Bible) with a billet on the head behind, whereby blood was shed, and death instantly ensued: this being without any provocation was adjudged murder, for which he was attainted, and before his execution (which was in the Strand over against Somerset-house) his right hand was first stricken off, by force of the Statute of 33 H. 8. for that the Tower was one of the Queens standing houses or Palaces.

The Kings Palace at Westminster hath this liberty and privilege, viz.  
Nullæ



Nullæ citationes, aut commotiones liceant fieri cuicunque infra Palatium Regis Westm.

Pasch. 8 E. 2. Coram rege Rot. 28. Norf.

Like privilege hath Westminster Hall, or other place, where the Kings Justices, &c. sit, as by these following Records appeareth

*a* Quia Bedellus Universatis citari fecit Wil. de Wivelingham infra ostium aulae Westm, Justiciariis sedentibus, ad comparend' coram Cancellario, &c. pro quo se posuit in gratiam Regis, committitur Gaolæ, & Henricus de Harwood, ad cujus sectam prosecutus fuit, committitur Mariscal. & finem fecit 40 s.

*a* Mich. 12 E. 2. Coram Rege Rot. 101. Cant.

*b* Matilda de Nyerford, filia Willielmi de Nyerford militis defuncti, did libel against John Earl of Warren, and *c* Johan de Barro Countes of Warren the Kings niece ( in caritina domine Regine Consortis Domini Regis ) in a cause of matrimony and divorce, and the same Johan de Barro was cited in the Kings Palace at Westminster, &c. It was upon full examination of the cause, adjudged in Parliament in these words, Quod prædictum Palatium Domini Regis, est locus exemptus ab omni jurisdictione ordinaria, tam regie dignitatis & coronæ suæ, quâ libertatis Ecclesiæ Westm, & maxime in præsentia ipsius Domini Regis tempore Parliamenti sui ibidem : ita quod nullus summonitiones, seu citationes ibidem faciat, & præcipue illis, qui sunt de sanguine Domini Regis, quibus major reverentia, quam aliis fieri debet, &c. Consideratum est, quod officiar committatur Turri London, & ibidem custodiatur ad voluntatem Domini Regis.

*b* Placita coram domino Rege in Parlamento suo apud Westm' in præsentia domini Regis. An. 21 E. 1. *c* Eleanor daughter of E. 1. married with William Earl of Barry alias Barro in France, and had issue the said Johan who married John Earl Warren.

Here two things are principally to be observed : First, That this royal privilege is not only appropriated to the Palace of Westminster, but to all the Kings Palaces, where his royal Person resides. Secondly, That this privilege is to be exempted from all Ecclesiastical jurisdiction, Regie dignitatis & coronæ suæ ratione, &c.

If any do rescue a prisoner in or before any of the abovesaid Courts, committed by any of the aforesaid Justices, it is a great misprision, for which he and the prisoner assenting to it, shall forfeit their lands and goods, and their bodies to perpetual imprisonment, but shall not lose his hand, because no stroke or blow was given.

22 E. 3. 13.

But it was resolved by all the Judges, that where Thomas Oldfield, sitting the Court of the Duchy of Lancaster, with a knife stabbed one Ferror a Justice of Peace in the view of the said Court, that the Court of the Duchy was none of the Courts to make it a misprision to lose his right hand, &c. but the offender was to be indicted, and grievously fined.

Trin. 8 Jac. reg. Oldfields case.

And in 9 El. one Guirling stroke another in the White hall, sitting the Masters of Requests, and it was then resolved by the Court of Kings Bench, that it was not any misprision for the which he should lose his right hand, &c. but he was indicted and fined.

Pasch. 9 El. Guir- lings case.

Quia Thomas de Holbroke manus violentas imposuit super Johannem de Loudham, &c. ad Sessionem suam sedentem apud Gipwicum, & eum dementitus est, committitur in Parlamento Turri London, & finitur 20 l. & invenit sex milites manucaptors pro bono gestu suo.

Hil. 13 E. 3. Coram Rege Rot. 104. Suff.

And where some of the books abovesaid say, that the offender shall forfeit his lands, and some that he shall be disinherited, yet the forfeiture of his lands is only for term of his life, ( as before is said ; ) for being no felony, the blood is not corrupted, nor the heir disinabled to inherit. And this severe punishment is at the suit of the King, and the party may have his action, and it shall be tried by the officers and criers. And for such a stroke Thomas of Whittesly recovered five hundred pounds, Trin. 9 E. 3. Rot. 154. Midd.

Trin. 9 E. 3. Rot. 154. Midd.

Britton saith, Afcuns trespasses sont nequedent pluis punishable, si come trespas fait en temps de peas a \* Chivaliers, ou auters gents honorables per Ribaws, ou auters viles persons ; En quel case nous volons, que si Ribawe soit attaint al suit de chescun Chivalier, que il eyt serue per felony sans defart del Chivalier que le Ribawe perd son pome dont il trespassa : so great a respect in those days was had of honour and order. Ribawe is taken here for a Rascal Russian. There is a great misprision when any revenge is sought against a Judge, Ju-

\* Nota, for the dignity of Knights

stice,



Justice, Officer, Juror, Serjeant, Counsellor, Minister, or Clerk, for that, which they do in discharge of their several duties, offices, and places, concerning the administration of Justice.

Mich. 33 & 34 E. 1  
Coram Rege Rot.  
75.

Roger de Hegham and others being Justices of Oier and Terminer, and sitting in the Exchequer chamber, gave judgment for Mary late the wife of William Brewse Plaintiff, against William le Brewse Defendant, which judgment was pronounced by Roger de Hegham. William de Brewse demanded of Roger de Hegham if he would abow the judgment, and said, Roger, Roger, now thou hast thy will which of long time thou hast sought: of whom Roger de Hegham demanded, what is that? To whom William de Brewse said, my shame, and my loss, and this I will reward or recompence, or I will think of it. Whereof he being indicted and arraigned, and confessing the offence, the Record saith, Et quia sicut honor, & reverentia, qui ministris domini regis ratione officii sui faciuntur, ipso regi attribuuntur; sic dedecus & contemptus ministris suis facti eidem domino regi inferuntur; Consideratum est quod præd. Willielmus de Brewse, discinctus in corpore, capite nudo, tena depositus, eat à banco domini regis ubi placita tenentur in aula Westm', per medium aulae prædictæ, cum curia plena fuerit, usque ad Scaccarium (ubi deliquit) & ibidem veniam petat à præfato Rogero, &c. & postea committitur Turri London, ibidem moratur ad voluntatem regis.

Nota.

Braet. lib. 2. 105.  
These words were  
given to the Treasurer of England  
by the procurement of Pierce of Gaveston.

Note this exemplary judgment against a Gentleman of a great and honourable family. Quælibet poena corporalis, quamvis minima, major est quælibet poena pecuniaria. And in that Record it is said, Quod dominus Rex filium suum primogenitum, & charissimum Edwardum Principem Walliæ pro eo quod quædam verba grossa cuidam ministro suo dixerat, ab hospitio suo fere per dimidium anni amovit, nec ipsum filium suum in conspectu suo venire permisit, quousque dicto ministro de dicta transgressionem satisfecerat.

Hil. 20 E. 3. Coram Rege Rot. 160

Quia Petrus de Scales minatus fuit Ricm de Worlingworth, qui fuit de consilio Johannis de Moten, de vita & membris, dictus Petrus invenit plegios de bono gestu suo.

There be many Records for abusing of Jurors, viz. Pasch. 10 E. 3. Coram Rege Rot. 87. Gilbertus Twilt. Pasch. 26 E. 3. ibidem, Rot. 22. Essex, Tho. Hubbert Hil. 7 H. 5. ibidem, Rot. 24. Ricus Cheddre. Mich. 17 E. 2. Coram Rege Rot. 63.

Percussio clerici curiæ in veniendo versus curiam, &c. Trin. 11 E. 2. Coram Rege Rot. 42. London. Not only these particular revenges abovesaid, but all other of what kind soever are great misprisions.

Cap. Trineris.  
§ ultimo.

Also when any revenge is sought against any man for complaining in any of the Kings Courts, super gravaminibus, &c. for grievances, &c. Quia deterret homines à querelis super gravaminibus in forma juris. De hiis qui vindictam fecerint, eo quod aliquo modo super prædictis gravaminibus in Curia domini Regis conquesti fuerint.

Pasc. 10 E. 3. Coram Rege Rot. 86.  
Linc.

Justiciarii taxaverunt damna 2 Marc' super Willielmum Botesford, eo quod minabatur quandam Hawisiam de vita & membris, eo quod ipsa prosequeretur ipsum in placito transgressionis.

Inter leges Inæ c.  
9. Lamb. See the  
4. part of the Instit.  
cap. Chancery.  
Artic. Verf. Cardinal Woolsey.  
Art. 4, 5, 6, 11, 41.

We will conclude this point for private revenge with an ancient Law before the Conquest. Si quis privato consilio illatam sibi injuriam vindicaret, antequam jus æquum sibi dari postulaverit, quod nomine vindictæ eripuit reddito, integrum rei pretium præstato, & 30 solidos dependito.

See in the Fourth part of the Institutes cap. Of the Chancery, in the Articles against Cardinal Woolsey. Artic. 4, 5, 6, 11, 41.



## CAP. LXVI.

## Of Conspiracy.

**C**onspiracy is a consultation and agreement between two or more, to appeal, or indict an innocent falsely, and maliciously of Felony, whom accordingly they cause to be indicted or appealed; and afterward the party is lawfully acquitted by the verdict of twelve men: the party grieved may be relieved, and the offender punished two ways. First, by a Writ of Conspiracy, which is a civil or common Action at the suit of the party, wherein the plaintiff shall recover damages, and the defendant shall be imprisoned. Secondly, by Judgment at the suit of the King, the judgment whereof is criminal, of which we are now to speak.

Upon this suit of the King, if the offenders be convicted, the judgment is grievous and terrible, viz. That they shall lose the freedom or franchise of the Law, to the intent that he shall not be put or had upon any Jury or Assize, or in any other testimony of truth: and if they have any thing to do in the Kings Courts, they shall come *c per solem*, id est, by broad day, and make their Attorney and forerwich return by broad day. And their houses, lands, and goods, shall be seized into the Kings hands, and their houses and lands estrepped and waited, their trees rooted up and arrased, and their bodics to prison: all things retrograde, and against order and nature, in destroying all things that have pleased or nourished them; for that by falshood, malice and perjury, they sought to attain and overthrow the innocent. Which judgment in our Books is called a villainous judgment. First, in respect of the villany and shame which the party hath which receiveth it. Secondly, for that by the judgment he loseth the freedom and franchise of the Law, and therefore undergoeth a kind of bondage and villany. And the reason of this heavy and terrible judgment is: 1. For that the offenders have conspired and plotted the death and shedding of the blood of an Innocent. 2. That they do it under fair pretence of Justice, and by course of Law, which was instituted for the protection and defence of the innocent. 3. That if they had attained the innocent, he should have lost his life, (by an infamous death) his lands, his goods, and his posterity; for his blood thereby should have been corrupted, &c. 4. All this falshood, malice, and perjury is committed in placito Coronæ, in a suit for the King, which aggravateth and increaseth the offence; for that the King is the Head of Justice, and a protector of the innocent: and therefore at the Kings suit, and not at the suit of the party, this villainous judgment shall be given. So as the Law hath excellently distributed the remedies; the private action of the party to give him damages, &c. and the suit of the King for exemplary punishment. And it is to be observed, that this Villainous judgment is given by the Common Law, (as in the case of Attaint) and not by force of any Statute.

King E. 3. demanded of his Justices and Serjeants, whether divers men being indicted of conspiracy for the indicting of R. of Felony, were mainpernable or no? And they answered the King expressly, that they were not, in respect of the odiousness of the offence.

Vide statum de conspiratoribus, Anno 21 E. 1. ver. Mar. cap. part. 1. fo. 111. & definitionem conspiratoris. 32 E. 1. 1584. fo. 505. Artic. 109. Cap. 15. F. N. B. 112. 115. Statut. 12 E. 1. 120. rec. Lib. 4. fo. 45. Lib. 9. fo. 10. 56, 57. 58. b 24 E. 3. 45. 27. aff. 43 E. 3. Conspiracy. 11. 59. 4 H. 5. Judgment 120. the like judgment as in attaint. See the first part of the Institutes. Sect. c Trin. 18 E. 3. coram Rege. Rot. 148. Pasch. 32 E. 3. coram Rege. Rot. 58.

27 Lib. aff. p. 125



## CAP. LXVII.

## Of Pensions, &amp;c. received by Subjects of Foreign Kings, &amp;c.

See the fourth part  
of the Institutes,  
ca. the Chancery,  
Artic. against Car-  
dinal Woolsey.  
Art. 27. Vide  
Parl. 7 R. 2. nu. 16.  
Mat. ca. 26. v. 24.

*Nemo potest duobus  
dominis servire: aut  
enim unum odio ha-  
bebit, & alterum  
diliget, aut unum  
sustinebit, & alte-  
rum contemnet.*

4 Regum cap. 5.  
v. 26. & c. Gehesi.

See 3 Jac. c. 5. con-  
cerning the service  
of a Subject as a  
Souldier or Cap-  
tain to a forraign  
Prince; hereafter  
cap. Fugitives.

Polydor. Hall. Hol-  
lingshed. Stow. & c.

a Rot. Parl. 7 R. 2.  
nu. 15. 18. 20, 21,  
22, 23.

b Ibid. nu. 17.

c Ibid. nu. 24.

**I**T is not lawful for any Subject of the King of England to take a Pension, &c. of any forraign King, Prince, or State ( without the Kings licence ) albeit they be in League with the King of England ; both, for that they may become enemies, and for that also it is mischievous and dangerous to the King himself and his State, as it appeareth by this Distichon,

Principe ab externo veniunt lethalia dona,

Quæ studii specie, fata, necemque ferunt.

And this was (say they) the case of the Lord Hastings Chamberlain to King E. 4. who in the Fifteenth year of his Reign, received a Pension of two thousand Crowns yearly from the French King : who being informed by Justice Catesbye his inward friend, and others learned in the Law, that the receiving hereof was an offence against Law, being desired by Pierce Clerett a Frenchman ( who paid the Pension ) to make him an acquittance for receipt thereof for his discharge, utterly refused the same. This report I do the rather hold to be true, for that all our English Historians, ( who for the most part rehearse but the carkals or outside of any point in Law ) give great credit hereunto. And what ill consequence this and other like Pensions, and others of the Council of King E. 4. had, you may read in our Histories.

See the case in 7 R. 2. of a Spencer Bishop of Norwich; and there also the case of b Pierce Cressingham, and others : and of c Sir William Ellingham and others, punished for receiving of money, &c. of the French King, which drew them without the Kings licence, to yield up Castles and Ports in France committed to their custody, punished by Fine and Imprisonment.

See the fourth part of the Institutes, cap. Of the Chancery, Artic. 27. against Cardinal Woolsey.



## CAP. LXVIII.

Of Bribery, Extortion, Exaction, &c.  
And first of Bribery.

**B**ribery is a great misprision, when any man in Judicial place Fortescue, ca. 51. takes any Fee or Pension, Robe, or Livery, Gift, Reward, or Brocage of any person, that hath to do before him any way, for doing his office, or by colour of his office, but of the King only, unless it be of meat and drink, and that of small value, upon divers and grievous punishments.

**T**his word [Bribery] cometh of the French word Briber, which signifieth to devour, or eat greedily, applied to the devouring of a corrupt Judge, of whom the Psalmist speaking in the person of God, saith, *Qui devorat plebem meam sicut escam panis. Qui cognoscit faciem in iudicio, non bene facit: ille pro buccella panis deserit veritatem.* Plalm. 13. 4. Prov. 28. 21.

But let us peruse the Branches of this description.

**[A great misprision.]** But it may be objected, that Bribery in a Judge was sometime adjudged a higher offence. For whereas at the Assises holden at Lincoln in the 23 year of E. 3. an Exigent was to have been awarded against Richard Saltley, Hilderbrand Boreward, Guilbert Holliland, Thomas Derby, and Robert Dalderby, who formerly had been indicted of divers felonies before Sir William Thorpe, Chief Justice of the Kings Bench, and one of the Justices of Assise of the said County of Lincoln, he the said Sir William Thorpe to stay the said Writ of Exigent against them, Cepit munera contra juramentum suum, viz. of Richard Saltly 10 li. of Hilderbrand 20 li. of Holliland 40 li. of Derby 10 li. and of Dalderby 10 li. King Edward the Third appointed the Carls of Arundell, Warwick, and Huntingdon, and two Lords, the Lord Gray and the Lord Burghers, to examine the matter. Before whom Sir William Thorpe being charged with the said Bribery, Non potuit dedicere, &c. Now the Record saith: *Consideratum est per dictos Justiciarios assignatos ad iudicandum secundum voluntatem Domini Regis, & secundum regale posse suum, quod quia predictus Willielmus de Thorpe, qui sacramentum Domini Regis, quod erga populum suum habuit custodiendum, fregit maliciose, false, & rebelliter in quantum in ipso fuit, & ex cautis supradictis per ipsum Willielmum, ut predictum est, expresse cognitis suspendatur, & quod omnia terre & tenementa, bona & catalla sua remaneant forisfacta.* This sentence seemeth to have his foundation as well upon the oath of the Judges, (for the Record saith) contra juramentum suum, and the conclusion of the Oath, And in case ye be found in any default in any of the points aforesaid, ye shall be *ad voluntatem Regis*, of body, lands, and goods, thereof to be done as pleaseth him: As also for that this last clause is enacted by authority of Parliament (as they say) in Anno 20 E. 3. And hereupon they the said Lords were appointed to judge secundum voluntatem domini Regis, & regale posse suum, according to the words of the Oath and Act of Parliament. And this judgment was repeated in Anno 25 to the Lords, and affirmed by them. Rot. Par. Anno 24 E. 3. part 3. m. 2. & Rot. Par. Anno 25 E. 3. part 1. m. 17. Rot. Par. 25 E. 3. nu. 10. 23 E. 3. Anno 24 E. 3. The Oath of the Justices Anno 18 E. 3. 20 E. 3. cap. 25.

This precedent is not to be followed at this day for divers causes. First, it seemeth by the violation of the Kings Oath, and of this word [rebelliter] and by the forfeiture of all his lands and tenements to the King, that this offence should



be Treason against the King, and then it being either High Treason, or Petit Treason, it is taken away by the Statute of 25 E. 3. De proditionibus, the same being none of them that are there expressed. And in all the Record this word [felonice] is not to be found, as it ought to have been, if it had been Felony.

Anno 35 E.1. the  
stat. of Carlisle.

Neither by the words of the Oath, or of the supposed Act of 20 E. 3. can the judgment (quod suspendatur) be warranted: for these words [to be at the Kings will for body, &c.] cannot be extended to loss of life, no more then the Statute of Carlisle (sub forisfactura omnium, quæ in potestate sua obtinet) extendeth not to forfeiture of life, but to imprisonment, &c. viz. loss of liberty, &c.

20 E. 3. cap. 4.

But at this Parliament, viz. in Anno 20 E. 3. taking in hand of quarrels other then their own, and maintenance of them, is prohibited upon the pains aforesaid, viz. the pains contained in the said supposed Act of 20 E. 3. cap. 1. upon pain to be at our will, body, lands and goods; to do thereof as shall please us: which without question was never extended to loss of life, &c. but to imprisonment, as common experience daily teacheth. For, Hæc est voluntas Regis, viz. per Justiciarios suos & per legem, &c. Therefore, as by the Record appeareth, Sir William Thorpe was pardoned and restored to all his lands. And we were desirous to see the Record of the Act of 20 E. 3. cap. 1. but there is no Record of any such Act in the Parliament Roll. And the very frame and composition of it seemeth to be but a rehearsal of a Commandment from the King: for the letter of it beginneth. First, we have commanded all our Justices, that they shall from thenceforth do equal Law, &c. and therefore justly omitted out of the Parliament Roll of Acts of Parliaments: and yet the imprinting of it necessary, for that the fourth Chapter of this Parliament hath reference to the pains contained in it.

2 R. 3. fo. 11.

See 8 R. 2. cap. 3.  
Rot. Parl. 10 R. 2.  
nu. 24.

Vide 1 H. 4. nu. 99.  
& Nota.

It is enacted by Parliament Anno 11 H. 4. in these words.

Rot. Parl. Anno  
11 H. 4. nu. 28.  
never imprinted.

Item. **O**Ve nul Chancellor, Treasurer, Garden del Privie Seal, Counsellor le Roy, Serjeants a Councill del Roy, ne nul autre Officer, judge ne minister le Roy, pernans fees ou gages de Roy pur lour ditz offices ou services, preigne en nul manner en temps a vener ascun manner de done ou brocage de nulluy pur lour ditz offices & services a faire, sur peine de responder au Roy de la treble que issint preignent, & de satisfaire la partie, & punys al volunt le Roy, & soit discharges de son office, service, & councel per tous jours, & que chescun que voiera pursuer en la dit matter, eit la suite cibien pur le Roy, come pur luy mesme, & eit la tierce part del somme, de que la partie est duement convict.

2 R. 3. 11. 2.  
\* Plac. de Parl.  
apud Atherugg  
in Cr'o Ep. anno  
19 E. 1.  
Et Hollingsh.  
Chron. pag. 284,  
285. he confessed  
felony, and abju-  
red.

By this Act of Parliament, which is the judgement of the whole Parliament, it appeareth, that, if that which is imprinted as the first Chapter of 20 E. 3. had been an Act of Parliament, then this Statute of 11 H. 4. would never have inflicted this kind of punishment, which is other, and far less then that which is mentioned in 20 E. 3. And where it is said in this Act of 11 H. 4. [ & punis al volunt le Roy ] that is, by fine and imprisonment by the Court where the conviction shall be; for, as hath been said, Hæc est voluntas Regis, viz. per Justiciarios suos, & legem suam, & non per dominum regem in camera sua, vel aliter.

So as by warrant of this Act of Parliament we have said, that Bribery is a Misdemeanor; for that it is neither Treason, nor Felony; and it is a great Misdemeanor, for that it is ever accompanied with Perjury.

\* True it is, that Sir Thomas Weyland, Chief Justice of the Court of Common pleas, was attainted of Felony, but it was not for Bribery, but being guilty of



of being accessory to murder, for the which by the Common Law he was abjured the Realm.

Likewise Adam de Stratton Chief Baron of the Exchequer, a man of great possessions and riches, was attainted of felony by him committed: all which I collect upon Records of Parliament the surest guides. For in the Parliament holden in 18 E. 1. in the same year when he was attainted, I find two petitions one preferred by himself in these words, Adam de Stratton petit gratiam Regis, quod restituatur ad aliquam partem terrarum suarum, & de bonis suis quæ habuit tempore quo fuit \* viz. 26000 l.

Rot. Parl. 18 E. 1. fol. 5. num. 61.  
\* There is a space left in the Record

The other by Margaret de Boteler in these words, Margareta quæ fuit uxor Joh. de Boteler, de qua Adam de Stratton tenuit 12 l. 10 s. in London, clamat habere ut eschaet. Respons. Rex non concessit; quia in civitate nulla est eschaeta nisi Regis And at the same Parliament f. 3. it is resolved, non sunt nisi tres formæ brevis de Eschaeta; Quia utlagatus, vel suspensus, vel abjuravit regnum. And by consequence Adam de Stratton seeing his lands escheated, must have the judgment of one of these three. Which we have added to answer secret objections that might be made out of the mistakings of our Chronicles.

Et ibid. num. 69.

The rest of the Justices were removed, fined, and imprisoned, saving Johannes de Mettingham, and Elias de Beckingham, who to their eternal memory and honour were found upright, and free from all bribery and corruption.

Rot. Parl. 20 E. 1. fol. 5.

It was petitioned in Parliament, that the Statutes whereby the Justices of the one bench or the other should take no reward, ne be of any mans fee, may be observed. The Kings answer was, [The King hath and will charge such Justices to minister right, and will punish the contrary, and therefore willeth that all Statutes made touching them and the Barons of the Exchequer, be made void.]

10 R. 2. num. 23.

[When any man in judicial place, &c.] For the difference between bribery and extortion is, that bribery is only committed by him, that hath a judicial place, and extortion may be committed both by him that hath a judicial place, or by him that hath a ministerial office.

And this offence of bribery may be committed by any that hath any judicial place either Ecclesiastical or Temporal. Non accipies personam nec munera, (and the reason is expressed by the Holy Ghost) quia munera excæcant oculos sapientum, & mutant verba iustorum.

Deut. 16. 19.

If bribery hath so great force, as to blind the eyes of the wise Judge, and to change the words of the just, Beatus ille, qui excutit manus suas ab omni munere. Judex debet habere duos Sales; Salem Sapientiæ, ne sit insipidus, & Salem Conscientiæ, ne sit diabolus.

Though the bribe be small, yet the fault is great: and this appeareth by a Record in the Reign of E. 3. Quia diversi Justiciarii ad audiendum & terminandum assignat ceperunt de Johanne Berners qui indictatus fuit, 4 l. pro favore habendo die deliberationis suæ, finem fecerunt domino Regi per iv M. marcas, so as they paid for every pound a thousand marks. See before Sir William Thorps case, Rot. Parl. 7 R. 2. the Chancellour was accused of a bribe of ten pound, and his man four pound and certain fish, which, though the things were small, yet it had been punished, if it had been proved.

Pasch. 17 E. 3. Coram Rege. Rot. 139  
Essex. John Berners case.  
Rot. Parl. 7 R. 2. num. 12. 13.

[Take any fee, robe, gift, or reward.] This is warranted by the oath aforesaid.

Anno 18 E. 3.

But admit the party \* offereth a bribe to the Judge, meaning to corrupt him in the case depending before him, and the Judge taketh it not, yet this is an offence punishable by the Law in the party that doth offer it.

\* Since these Institutes so was it resolved in the Star-chamber, Trin. 6. Car. Reg. in an information against Bonham Norton and others.

[Brocage.] There is good warrant for this word by the said Act of 11 H. 4.

[Of any person that hath to do before him any way.] This hath his ground upon the oath aforesaid, so as bribery may be committed not only when a suit dependeth in foro contentioso (as it was in the case of Sir Fr. Bacon

con



2 R.2. cap. 2. See  
the Statute of  
5 E. 6. cap. 16.

con H. of S. Alban. H. Chancelloz of England, who for many exorbitant and fordid briberies was sentenced by the Lords of Parliament, which you may read Rot. Parl. An. 19 Jacobi regis ) but also when any in Judicial place doth any thing virtute of colore officii, though there be no suit at all. For example, if the Lord Treasurer for any gift or bribe, shall make any Customer, Controller, or any Officer or Minister of the King, this is bribery, for he ought to take nothing in that case by the Statute of 12 R.2. but that he make all such Officers and Ministers of the best, and most lawful men, and sufficient for their estimation and knowledge. ( An excellent Law tending greatly to his Majesties advantage, to the good usage and encouragement of Merchants, &c. and generally to the advancement of Commerce, Trade, and Traffick, the life of this Island. ) Read this Statute, for it is of a large extent, and the Statute of 5 E.6. for they are Laws made contra ambitum, and worthy to be put in execution, for they prevent bribery and extortion : for they that buy will sell.

Vendit Alexander claves, altaria sacra :  
Vendere jure potest, emerat ille prius.

Hil. 8 Ja. In Comuni banco D.  
Trevers case. See  
hereafter ca. of Simonv, and the 1.  
part of the Instit.  
Sect. 378. fol. 234.  
\* Rot. Parl. 21 Jac.  
Regis.

And that Statute of 5 E. 6. doth extend as well to Ecclesiastical officers, as Temporal, which concern the administration and execution of Justice. And it was resolved in the case of Doctor Trever Chancellor of a Bishop in Wales, that both the office of Chancellor and Register of the Bishop are within that Statute, because they concern the administration of justice.

\* L. Carl of M. Lord Treasurer of England took colore officii divers bribes, &c. And namely where the Farmers of the Customs exhibited a petition to have certain just allowances, which his Majesty referred to the said Lord Treasurer, who long delayed the petitioners, until they gave him several bribes, and then he gave way to relieve them. For this, and other his briberies, extortions, oppressions, and other grievous misdemeanors in his several offices of the Lord Treasurer, and Master of the Court of Wards ( no suit being in any of those cases depending ) upon complaint, and charge of the Commons in this Parliament, and after evident proof and often hearing of the cause, the Lords of Parliament ( the Lord Treasurer being brought to the bar by the Gentleman Usher and Serjeant at Arms, and kneeling till he was commanded to stand up ) upon the petition of the Commons by the Speaker gave this judgment against him by the mouth of the Lord Keeper in these words. This High Court of Parliament doth adjudge : 1. That you L. Carl of M. now Lord Treasurer of England shall lose all your offices which you hold in this Kingdom. 2. And shall be for ever incapable of any office, place, or employment in this State and Commonwealth. 3. And that you shall be imprisoned in the Tower of London during the Kings pleasure. 4. And that you shall pay to our Sovereign the King the fine of 50000 l. 5. And that you shall never sit in Parliament any more. 6. And that you shall never come within the verge of the Kings Court : as by the said Roll of the Parliament appeareth, which is worthy of your reading at large.

Anno 21 H. 8.  
Artic. 18.

In anno 21 H.8. By Articles under the hands of all the Lords of the Privy Council, ( whereof Sir Thomas Moor then Lord Chancellor was one ) and of the principal Judges of the Realm, which I have seen, Cardinal Woolsey was charged with divers briberies, namely in the 18 Article, in these words. Also the said Lord Cardinal contrained all Ordinaries in England, yearly to compound with him, or else he would usurp half, or the whole of their jurisdiction by prevention, not for good order of the Dioceses, but to extort treasure : for there is never a poor Archdeacon in England but that he paid to him a yearly portion of his living.

21 H. 8 cap. 5.  
Vide 2 R.2. Rot.  
Parl. num. 46.

If any Ordinary, &c. having power by the Act of 21 H.8. to grant the administration of the goods of him that dieth intestate, or as intestate, to the widow or next of kin, &c. take any reward for preferring of any person, before another, to the administration, it is Bribery.



Si quis contra fas & leges administrarit, vel pro odio, quod in alium habuerit, judicavit perperam, aut denique nummarium se Judicem præbuerit, proprii capitis estimatione Anglorum jure Regi damnatur, nisi quidem legum id accidisse insuetudine. &c.

The Law before the Conquest. Inter leges Canuti cap. 13.

## CAP. LXIX.

## Of Extortion, Exaction, &amp;c.

**T**his is another great a Disposition, because it is accompanied with perjury. Hereof you may read in the First part of the Institutes, Sect. 701. See also in the Second part of the Institutes W.1. cap. 26. & cap. 10. And in the Fourth part of the Institutes cap. Chancery, in the Articles against Cardinal Woolsey. Article 3. Extortion of Ordinaries. *b* Ranuatores hominum, extortionatores hominum: a Rancunier, an extortioner of men.

*c* The Collectors of the Fiftens were committed to prison, for that they took of every Town eighteen pence for an acquittance.

*d* A Coroner was committed to prison, because he would not take the view of the dead body, before he had received for himself six shillings eight pence, and for his Clerk two shillings, and was fined at forty shillings.

*e* If any of the Kings Council or his Ministers do exact a bond of any of his subjects, to come to the King with force and arms, &c. when they should be sent for, such writings are to the Kings dishonor: for that every man is bound to do to the King, as to his liege Lord, all that appertaineth to him without any manner of writing, (note the generality hereof) and such writings are to be cancelled, as by the Act appeareth.

Hereupon (by Authority of this Parliament) these conclusions do follow. First, Whatsoever any subject is bound to do to the King as to his liege Lord, no bond or writing is to be exacted of the subject for doing thereof. Secondly, Whatsoever bonds or writings are to the Kings dishonor, are against Law. Thirdly, Whether such bonds or writings be made to the King or any other, the bonds or writings be void.

*g* If a Bishop or other Ecclesiastical Judge, or Minister, doth exact a bond or oath of any person in any case Ecclesiastical not warrantable by Law, the bond is void, and this exaction is punishable by fine, &c. the Record is very long, but worthy to be read. See Rot. Parl. Anno 8 H. 4. num. 15, 16, 17, 18, 19, 20. excellent matter concerning fees in Courts of Justice, and in the Kings household.

*b* Officialis indictatus de citando, & affligendo plurimos, non potest dedicere, & petit quod admittatur ad finem.

*i* Contra sequestratores, commissarios & alios offic' Episcoporum pro captione feodorum, priusquam debent, pro testamentis probandis.

*k* The extortion of the Clergy, and of their Ministers to be enquired of by Justices of Peace.

Resolutions upon the Statute of 21 H. 8. c. 5.

If a man make his Testament in paper, and dieth possessed of Goods and Chattels above the value of forty pound, and the Executor causeth the Testament to be transcribed in parchment, and bringeth both to the Ordinary &c. to be proved; It is at the election of the Ordinary whether he will put the Seal and Probate to the original in paper, or to the transcript in parchment: but whether he put them to the one or the other, there can be taken of the Executor, &c. in the whole but five shillings, and not above, viz. two shillings six pence to the Ordinary, &c. and his Ministers, and two shillings six pence to the Scribe

*a* Lib. 10. f. 101. & 102.

Beawfages case.

See the 1. part of the Institutes Sect. 701. Verb. [Extortioners] 2. part of the Instit. W. cap. 26. The 4. part of the Institutes, cap. Chancery, in the Articles against Cardinal Woolsey, Art. 3.

*b* Trin. 28 E. 3. Coram Rege Rot. 37. Eborum.

*c* Hill. 20 E. 3. Coram Rege Rot. 159 Norff.

*d* Ibidem in the same Roll.

*e* 1 E. 3. Stat. 2. c. 15

*f* Nota.

*g* Int. Inquisit. apud Lanceson Coram Rogero Loveday & Waltero de Wynborn An. 10 E. 1. Cornub.

*b* Mich. 22 E. 3. Coram Rege Rot. 181. Eborum.

*i* Hil. 23 E. 3. Coram Rege.

*k* Rot. Parl. 3 R. 2. nu. 38. 39. 1 H. 5. nu. 23, 24.

*l* Mich. 6 Jacobi. Rot. 1201. in Comuni Banco. Int. Edm. Neale Informer, &c. & Jacobum Rowse official intra Archidiaconat' de Huntingdon Defendant per le Chief Justice. Walmsley, Warburton Daniel, & Foster.



For punishment of Ecclesiastical Judges for extortion. See Rot. de Inquisit. in Com. Eborum. Somerset, &c. Anno 4 E. 1. in Thesaur. De iudicibus Ecclesiasticis dicunt, &c. Rot. Parl. 8 E. 3. nu. 9. The Statute of 31 E. 3. cap. 4. Pasch. 32 E. 3. Coram Rege, Rot. 27 Rot. Parl. 50 E. 3. nu. 9. 1 R. 2. n. 109. 2 R. 2. n. 40. 13 R. 2. n. 38. 29. 7. n. 53. The Statute of 3 H. 5. cap. 4.

Mich. 20 Jacobi in Camera Stellata, in Sir Jo. Bennets case.

2 H. 4. cap. 10.

2 H. 4. cap. 8.

2 H. 4. cap. 23.

33 H. 8. cap. 39.

for registering the same: or else the said Scribe to be at his liberty, to refuse those two shillings and six pence, and to have for writing every ten lines of the same Testament, whereof every line to contain ten inches, one penny.

If the Crecutor desire that the Testament in paper may be transcribed in parchment, he must agree with the party for the transcribing; but the Ordinary, &c. can take nothing for it, nor for the examination of the transcript with the original, but only two shillings six pence for the whole duty belonging to him. Where the goods of the dead do not exceed an hundred shillings, the Ordinary, &c. shall take nothing, and the Scribe to have only for writing of the Probate six pence, so the said Testament be exhibited in writing with wartherunto affixed ready to be sealed. Where the goods of the dead do amount to above the value of an hundred shillings, and do not exceed the sum of forty pound, there shall be taken for the whole but three shillings six pence, whereof to the Ordinary, &c. two shillings six pence, and twelve pence to the Scribe for registering the same. Where by custom less hath been taken in any of the cases aforesaid, there less is to be taken. And where any person requires a copy, or copies of the Testament so proved, or Inventory so made, the Ordinary &c. shall take for the search, and making of the copy of the Testament or Inventory, if the goods exceed not an hundred shillings, six pence, and if the goods exceed an hundred shillings, and exceed not forty pound, twelve pence. And if the goods exceed forty pound, two shillings six pence, or to take for every ten lines thereof of the proportion before rehearsed, a penny.

When the party dies intestate, the Ordinary may dispose somewhat in pious uses, notwithstanding the said Act of 31 E. 3. but with these cautions. 1. That it be after the Administration granted, and Inventory made, so as the state of the intestate may be known, and thereby the sum may appear to be competent. 2. The Administrator must be called to it. 3. The use must be publick and godly. 4. It must be expressed in particular. And 5. There must be a decree made of it, and entered of record: So in case of commutation of penance, it must be after sentence, and mutatis mutandis, ut supra.

Whether is twenty, forty, or an hundred be indicted of one felony, or one trespass, and all plead to an issue, as not guilty, the Clerk of the Crown of the Kings Bench, ought not to take for the Venire facias, or for the entering of the plea, above two shillings, but the said Clerk did take for every such name by extortion two shillings. It is ordained and established, that the said Clerk of the Crown, shall take no more then hath been duly used of old time. And moreover our Sovereign Lord the King hath charged the said Justices of the Kings Bench, that no extortion be done in this behalf in the Bench aforesaid.

The Chirographer of the King in the Common Bench for making and writing of every Fine levied four shillings, and no more, upon pain (if he take more) to lose his office, be expelled the Court, one years imprisonment, and to pay to the party grieved his treble damages.

The fees to the Marshal of the Marshalsea of the Kings house, you may read in the Statute of 2 H. 4. Vide 9 R. 2. cap. 5.

If any Auditor of the Exchequer, Dutchy of Lanc', or Court of Wards take more then three shillings four pence, for the enrolment of any Letters Patents, Decree, Grant, or Indenture of Lease, he shall forfeit, for every penny so taken, six shillings eight pence.

Munera ne capias, uncus latet harnus in esca.  
Nulla carent visco munera, virus habet.



## CAP. LXX.

## Of Usury.

**U**Sury is a contract upon the lene of money, or giving days for forbearing of money, debt, or duty, by way of lene, chibifance, shifts, sales of wares, or other doings whatsoever. *Usura dicitur ab usu & ære, quia datur pro usu æris*: or *Usura dicitur, quali ignis urens.*

And first, Usury is directly against the Law of God. And the reason wherefore it was permitted by the Law of God for an Hebrew to an Infidel, was; because it was a mean either to exterminate, or to depauperate them, as they should not be able to invade, or insure Gods people. Deut. cap. 21.  
Exo. 22. Levit. 25.  
Ezek. 2. Psal. 15.

c And it is adjudged by authority of Parliament, that all Usury being forbidden by the Law of God, is sin, and detestable. And it is also enacted by Parliament, that all usury is unlawful, that is to say, against the Laws of the Realm. Let us therefore see what former Laws have provided herein. c 13 Eliz. cap. 8.  
21 Jac. cap. 17.

d Si quis de usura convictus fuerit, omnes res suas amittat.

e Usurarii omnes res, siue testatus, siue intestatus decesserit, domini Regis sunt: vivus autem non solet aliquis de crimine usuræ appellari, nec convinci, sed inter cæteras regias inquisitiones solet inquiri, & probari aliquem in tali crimine decessisse per 12 legales homines de vicineto & per eorum sacramentum. Quo probato in Curia, omnes res mobiles, & omnia catalla, quæ fuerunt ipsius usurarii mortui, ad usum domini Regis capiuntur, penes quemcumque inveniantur res illæ. Hæres quoque ipsius, hac eadem de causa exheredatur secundum jus regni; & ad dominum, vel dominos revertetur hæreditas. Sciendum tamen, quod si quis aliquo tempore usurarius fuerit in vita sua, & super hoc in patria publice defamatus, si tamen a delicto ipso ante mortem suam delituerit, & poenitentiam egerit: post mortem ipsius, ille, vel res ejus lege usurarii minime censentur. Oportet ergo constare quod usurarius decesserit aliquis ad hoc, ut de eo tanquam de usurario post mortem ipsius judicetur, & de rebus ipsius, tanquam de rebus usurarii disponatur.

Vide statutum de Merton cap. 5. & Fleta lib. 2. cap. 50. f Manifestus usurarius est intestabilis.

g Et inter les constitutions ordeins per les viels royes Alfred, &c. ordeine fuit que les chattels des usurers fuissent al Roy, & que les heritages des usurers remeissent escheats al Seigniors des fees, & ne ferr' interre in Sanctuary.

h Item, atrox injuria est, quæ omnium mobilium amissionem confert, & legem liberam aufert, quæ locum habet in usurariis Christianis.

i Ad 16 Artic. de usuris respondetur: Quod licet Episcopis pro peccato illo poenitentiam usurario injungere salutarem. Sed quia committendo usuram, usurarius turpitudinem committit, & super hoc est convictus, catalla & terræ usurarii, sicut catalla furis, sunt regis, & si qui sequi voluerint contra hujusmodi usurarium, restituantur eis bona sua, quæ ipsi usurarii per usuram extorserunt.

k And it appeareth by Bracton, that it was an Article of the charge of Inquiry by Justices in Eyre De usurariis Christianis mortuis, qui fuerunt, & quæ catalla habuerunt, & quis ea habuerit. Et quod nullus recipiet usuram arte vel ingenio. And divers were indicted for taking of usury before Justices in Eyre, and some were pardoned by the King, and others not.

In ancient time a great revenue by reason of the usury of the Jews came to the Crown: For between the 50 year of H. 3. and the 2 year of E. 1. which was not above seven years compleat, there was paid into the Kings Coffers Four hundred and twenty thousand pounds of and for the usury of the Jews. And yet that excellent King for divers weighty reasons worthy to be written in letters of Gold, did by Authority of Parliament utterly prohibit the same, in these

31 H. 3. c. 9.  
13 Eliz. c. 8.

Deut. cap. 21.  
Exo. 22. Levit. 25.  
Ezek. 2. Psal. 15.

c 13 Eliz. cap. 8.  
21 Jac. cap. 17.

d See the cust. de  
Norm. cap. 20.  
Int. leges S. Edw.  
e Glanvil. lib. 7.  
cap. 15.

Merton cap. 5.  
f Fleta lib. 2.  
cap. 50.  
g Mirror cap. 1.  
S. 3. & cap. 5. S. 1.  
Parl. 50 E. 3. nu. 58.  
h Fleta lib. 2. c. 1.

i Rot. Parliam.  
51 H. 3. Petitiones Cleri.

k Bract. lib. 3.  
fo 116 117.  
Fleta lib. 2 c. 1.  
Cap. itineris vet.  
Mag Cart part 1.  
fo. 151.  
Rot. pat. 2 E. 1.  
m. 10. 12. 21.  
22. 36 Rot. laus.  
2 E. 1. m. 1.  
Rot. pat. 3 E. 1.  
nu. 12. 17. 20.  
William. Middleton reddit  
competum.



Ver. Mag. Cart.  
2. part fo. 58, 59.  
Stat. de Judaismo.  
See the 2. part of  
the Institutes,  
Stat. de Judaismo  
and the Exposition  
upon the same.

words. Forasmuch as the King hath perceived that many evils and disherisons of the good men of his Land had come to pass by the Usuries which the Jews have done in times past, and that many sins and offences have risen thereupon; albeit he and his Ancestors have had great profit thereby of the Jews; notwithstanding for the honour of God, and for the common profit of his people, the King hath ordained, and established, that no Jew shall take Usury, &c. Before this time Jews were divers times banished this Realm, but still they returned again. But this wise and worthy King by Authority of Parliament banishing their Usury, put the Jews into perpetual exile into forraign Countries, where usury was tolerated. By which Act it appeareth that the suppression of Usury tendereth to the honour of God, and the common profit of the people.

By which Authorities and Records, and by many others that might be remembered, it appeareth that by the ancient Laws of this Realm Usury was unlawful, and punishable, although the punishment was not always one, but sometime greater, and sometime lesser: And therefore at the Parliament holden in the fiftenth year of E. 3. It was enacted and declared, according as it had been sometime holden, that the King and his heirs should have consuance of Usurers after their death, and that the Ordinary of holy Church should have consuance of Usurers alive, forasmuch as to them it appertains, to compel them by the censures of holy Church, for the sin, to make restitution of usuries taken against the Law of holy Church. But this Statute was afterward repealed, as hereafter shall appear.

15 E. 3. ca. 5.

Hil. 6 E. 3. Coram  
Rege Rot. 130.  
Norff.  
Vide 26 E. 3. fo. 71.  
Moignes case.

Johannes Hopd convictus per Juratores pro usura capiend' 11 s. 8 d. pro 20 s. præstand', & sic de similibus.

Many of the Citizens of London giving over trade and traffick (which is the life of the Commonwealth, and specially of an Island) and betaking themselves to live upon usury, Sir William Walworth being Lord Mayor, by the advice of the Aldermen his brethren, took such good and strict order for the execution of Laws, and for suppression of Usury within the City of London, as the Commons in Parliament put up a petition to the King in these words, [That the order that was made in London against the horrible vice of Usury, might be observed throughout the whole Realm.] Whereunto the King answered, That the old Law should continue.

Rot. Parl. 50 E. 3.  
nu. 158.  
Vide Rot. Parl.  
6 R. 2. nu. 57.  
14 R. 2. nu. 24.

After this Sir John Northampton Mayor of the City of London, by the advice of the Aldermen his brethren, took more strict order for the suppression of unlawful Usury within the City of London: which had so good success, as the Commons in Parliament petitioned the King in these words, The Commons pray, that against the horrible vice of usury (then termed Schekes) and practised as well by the Clergy as Laity, the order made by John Northampton late Mayor of London may be executed through the Realm. Whereunto the King answered, The King willeth those Ordinances to be viewed, and if they be found to be necessary, that the same be then affirmed. And here it is to be observed, that of ancient time the notable Merchants of London detested Usury and Dry exchange. By the statutes of 3 H. 7. and 11 H. 7. all Usury is damned and prohibited, and there it is called Dry exchange. So as usury is not only against the Law of God, and the Laws of the Realm, but against the Law of nature. Usura contra naturam est, quia usura sua natura est sterilis, nec fructum habet.

3 H. 7. ca. 5, 6.  
11 H. 7. ca. 8.  
Vide 5 E. 6. c. 20.

27 H. 8. ca. 9.  
13 Eliz. ca. 8.  
21 Jac. cap. 17.

But now by the statutes of 37 H. 8. and 13 Eliz. all former Acts, Statutes and Laws ordained and made, for the avoiding or punishment of Usury, are made void, and of none effect. So as at this day, neither the Common Law, nor any Statute is in force, but only the statutes of 37 H. 8. 13 Eliz. and 21 Jac. And the Ecclesiastical Jurisdiction is saved by the said Statute of 13 Eliz. as thereby it appeareth. For the Exposition of which statutes of 37 H. 8. and 13 El. see in my Reports, viz. Lib. 3. fo. 80, 81. Lib. 5. fo. 67, 70. Lib. 9. 26.



## CAP. LXXI.

## Of Simony and corrupt Presentations.

**S**imony. *Simonia est vox ecclesiastica, à Simone illo Mago deducta, qui donum Spiritus sancti pecuniis emi putavit.*

Against Simony, &c. the Statute of 31 Eliz. is made in these words.

**B**E it enacted, that if any person or persons, bodies politique or corporate, shall or do for any sum of mony, reward, gift, profit or benefit, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance, of or for any sum of mony, reward, gift, profit or benefit whatsoever, directly or indirectly, present, or collate any person to any benefice with cure of Souls, dignity, prebend, or living Ecclesiastical; or give, or bestow the same for, or in respect of any such cause or consideration: \* That then every such presentment, collation, gift, and bestowing, and every admission, institution, investiture, and induction thereupon shall be utterly void, frustrate, and of none effect in Law; and that it shall, and may be lawful to and for the Queens Majesty, her heirs and successors, to present, collate unto, or give, or bestow every such benefice, dignity, prebend and living Ecclesiastical for that one time, or turn only, and that all and every person and persons, bodies politick and corporate, that shall give or take any such sum of mony, reward, &c. shall forfeit and lose the double value of one years profit of every such benefice, dignity, prebend and living Ecclesiastical. And the person so corruptly taking, procuring, seeking, or accepting any such benefice, dignity, prebend, or living, shall thereupon, and from thenceforth be adjudged a disabled person in Law to have, or enjoy the same benefice, dignity, prebend, or living Ecclesiastical.

Common Law, and malum prohibitum by the Civil or Canon Law; whereof the Judges of the Common

Law described by the Act following.

Stat. de 31 Eliz. cap. 6.

See the 5. part of the Instit. in the exposition of the said Act of 31 El. *In istum est illa vendere que gratis distribui devent.* Vide Matth. ca. 10. ver. 8.

\* Nota, the statute doth not make the bond, promise, covenant, or other assurance void, but the presentment, &c. and so it was adjudged, Pasch. 40. Eliz. Rot. 1745. in Communi Banco, between Gregory plaintiff, and Oldbury defendant. Nota differentiam inter malum in se against the Common Law, & malum prohibitum by statute Law, & malum in se against the

This is the text of this part of the Act, now let us proceed to the exposition hereof, being a necessary Law to be put in execution.

**[ Present or collate. ]** This is not only intended, where the person presenting or collating, hath right to present or collate; but also where any person or persons, bodies politique and corporate, do usurp, and have no title to present or collate. And so it was adjudged in case where the usurpation was to a Church of the King.

Sed quando presentatio & jus patronatus sunt temporalia, quaeritur quomodo fit Simonia per donum pecuniae pro illis; Respondendum est, quod jus patronatus & presentatio dicuntur spiritualia, respectu rei, ad quam presentatur, quae spiritualis est. Vide Linwood cap. de Jurejurando. fo. 80.

**[ Shall be utterly void and of none effect. ]** But here is to be observed a diversity between a presentation, or collation made by a rightful patron, and an usurper. For in case of a rightful patron, which doth corruptly present, or collate, by the express letter of this Act the King shall present: but where one doth usurp, and corruptly present or collate, there the King shall not present, but

Mich. 13 Ja. in Quare impedit. between the King and the B. of Norwich. Tho. Cole and Robert Secker, which began Pasch. 13 Jac. Rot. 21. for the Vicarage of Haverell in Suffolk.



Mich. 13 Jac. ubi  
supra.

the rightful patron: for the branch that gives the King power to present, is only intended, where the rightful patron is in fault, but where the rightful patron is in no fault, there the corrupt act, and wrong of the usurper maketh the benefice &c. void, but taketh not away the lawful title to present from the rightful patron, and so it was adjudged in the case abovesaid.

Mich. 41 & 42 El.  
in communi banco  
between Baker  
and Rogers.

Also upon these words, [If any patron without the notice of the person so presented, or collated, doth take reward, &c.] yet by the express Letter of this branch the Church &c. is void, for both the Letter and intention of this Act is to make the admission, institution and induction of any presentee, that cometh in by a corrupt patron void. And so it was resolved in the case abovesaid, as it hath been formerly adjudged in the Common place. But where the presentee is not privy, nor consenting to any such corrupt contract, as is prohibited by this Act, because it is no Simony in him, there the presentee shall not be adjudged a disabled person within this Act: for the words of that branch be, And the person so corruptly giving, &c. so as he shall not be disabled, unless he be privy to the corrupt contract: and upon the several penning of these several branches, the diversity abovesaid was resolved Mich. 13 Jac. ubi supra.

24 E. 3. fo. 35.  
38 E. 3. 3.  
7 Eliz. Dier 257.

¶ Shall forfeit and lose the double value of one years profit.] This double value shall be accounted according to the very, or true value, as the same may be letten, and shall be tried by a Jury, and not according to the extent, or taxation of the Church: whereof one was made both of the spiritualties and temporalities in 20 E. 1. 1292. in the time of Pope Nicholas: Of that vide 11 H. 4. fo. 35. F.N.B. 176. & Polichron. lib. 7. ca. 38. Rot. Parl. 18 E. 3. nu. 44. Stat. 2. 1 R. 2. nu. 102. 8 H. 6. nu. 15. And the other taxation was made in 26 H. 8.

5 E. 3. 29. 11 H. 4.  
26 H. 7. 6.  
17 H. 7. 11.  
13 H. 7. 8. b.  
27 H. 8. F.N.B.  
211. b. Placita  
com. 502.  
\* Anno 12 Jac.  
regis. Sir Arthur  
Ingram's case upon  
the Statute of  
5 E. 6. cap. 16.

¶ Be adjudged a disabled person in Law.] It was resolved in the case of Mich. 13 Jac. ubi supra, that the King could not dispence with this disability by a Non obstante: for when an Act of Parliament is made that disableth any person, or maketh any thing void, or tortious for the good of the Church, or Commonwealth, in this Law all the Kings subjects have an interest, and therefore the King cannot dispence therewith no more then with the Common Law: but where a Statute prohibiteth any thing upon a penalty, and giveth the penalty to the King, or to the King and Informer, there the King may dispence with the penalty, and this diversity is warranted by our books.

\* King James referred this case unto Sir Thomas Egerton Lord Chancellor of England, and to the Chief Justice of the Kings bench. Sir Robert Vernon being Coferer of the Kings house, by reason of which office, he hath the receipt and payment of 40000 li. of the Kings treasure yearly, and payeth the wages beneath the stairs, &c. did bargain and sell the said office for a great sum of money, and for certain annuities to be paid to Sir Arthur Ingram Knight. The first question was, whether the said office were void by force of the Statute of 5 E. 6. ca. 16. The second was, seeing the words of this Act be [shall be adjudged a disabled person in Law, to all intents and purposes to have and occupy any such office, &c.] whether the King might dispence with that [disabled.] And upon mature deliberation and hearing of counsel learned, they resolved, and so certified the King, that the said office was void by the said bargain and sale, and that the King could not dispence with the said disability, for the reason and cause abovesaid; and thereupon Sir Marmaduke Darrell was preferred to that office.

5 Eliz. cap. 1.

Likewise by the Statute of 5 El. every person which shall be elected a Knight, Citizen, Burges, or Baron of the Cinque ports for any Parliament, before he shall enter into the Parliament house, shall take the Oath of Supremacy appointed by the Act of 1 Eliz. and that he that entreth into the Parliament without taking the said Oath, shall be deemed no Knight, Citizen, Burges, or Baron, nor shall have any voice but shall be, as if he had never been returned, or elected. Here be words that amount to a disability, and therefore that according to the former resolutions the King cannot dispence with the same.

¶ It



¶ It is further enacted, That if any person shall for any sum of money, reward, &c. (*ut supra*) other then for usual fees, admit, institute, instal, induct, invest, or place any person in or to any Benefice with Cure of Souls, Dignity, Prebend, or other Living Ecclesiastical: That then every person so offending shall forfeit and lose double value, *ut supra*; and that thereupon immediately from and after the investing, installation, or induction thereof had, the same Benefice, &c. shall be eft-soons meerly void, &c.

The reason of this clause ( for I was of this Parliament, and observed the proceedings therein) was to avoid hasty and precipitate Admissions, Institutions, &c. to the prejudice of them that had right to present, by putting them to a Quare Impedit, and no such hast or precipitation is used, but for reward, &c. as it is to be presumed.

There be two great enemies to justice and right, viz. Præcipitatio, & morosa Cunctatio.

And albeit the Church is full by the Institution, &c. against all, but the King, yet the Church becometh not void by this branch of this Act, until after induction.

¶ And that the Patron, &c. shall and may present, &c. ] This is intended of the rightful Patron, or of him that hath right to present.

¶ And be it further enacted, That if any Incumbent of any Benefice with Cure of Souls shall corruptly resign, or exchange the same, or corruptly take for or in respect of the resigning or exchanging of the same, directly or indirectly, any pension, sum of money, or benefit whatsoever: That then as well the giver as the taker, &c. shall lose double the value of the money so given, and double the value of one years profit.

Vid. 14 H.4. 19:

By another branch of this Act it is provided, That if any person or persons shall or do receive, or take any money, reward, &c. *Ut supra*, (ordinary and lawful fees only excepted) for or to procure the ordaining or making of any Minister, or giving any Orders, or licence to preach, shall for every offence forfeit and lose the sum of forty pound, and the party so corruptly made Minister, shall forfeit and lose the sum of ten pound, and if at any time within seven years after such corrupt entring into the Ministry, he shall accept or take any Benefice, Living, or promotion Ecclesiastical, that then immediately, from and after the induction, investing, or installation thereof, or thereunto had, the same Benefice, Living, and Promotion Ecclesiastical shall be eftsoons meerly void, &c.

¶ Take a Benefice.] This word Beneficium Ecclesiasticum extendeth not only to Benefices of Churches Parochial; but to Dignities and other Ecclesiastical Promotions; as to Deaneries, Archdeaconries, Prebends, &c. And it appeareth in our \* Books that Deaneries, Archdeaconries, Prebends, &c. are Benefices with Cure of Souls; but they are not comprehended under the name of Benefices with Cure of Souls within the Statute of 21 H.8. by reason of a special Proviso; which they had been, if no such Proviso had been added, viz. Deans, Archdeacons, Chancellors, Treasurers, Chanters, Prebend, or a Parson where there is a Vicar indowed.

33 E.1. tit. Annuit. 51. Vide Canon. 40. 1 Jacobi 1603. the oath against Simony, &c.

\* 9 E.3. 22. 10 E. 3. 1. 29 E. 3. 41. Regist. 58. 21 H.8. c.13. vers. finem

¶ If any person or persons, bodies politick or corporate, which have election, nomination, voice, or assent in the choise, election, presentation or nomination of any Scholar, Fellow or any other person



to have room, or place in any Church Collegiat or Cathedral, Colledges, Schools, Hospitals, Halls, or Societies, shall take or receive any money, fee, or reward, &c. the place, room, office, &c. of the offender shall be void, &c.

Like cases in Pl. com. 176. upon the Statute of 32 H. 8. of Cond. Dier 20 El. upon the Statute of 27 H. 8. of Uses.

[ Which have election, presentation, &c. ] This Act being a Law perpetual, these words extend not only to such person and persons, &c. as at that time had election, presentation, &c. but to all and every person and persons, that at any time hereafter should have election, presentation, &c. otherwise the Law should be but temporary, which should be directly against the meaning of the makers of the Act. And by the same reason this Act extendeth not only to Churches, Colledges, Schools, Hospitals, Halls, and Societies founded at the time of the making of the Act, but to all such as should be erected or founded after.

[ And if any Fellow, Officer, or Scholar in any of the Churches, Colledges, &c. *ut supra*, contract or agree for any money, reward, &c. for the leaving, or resigning up of the same his room or place to any other, &c. shall forfeit and lose double the sum of money, &c. so received, and every person by whom or for whom any money, &c. shall be given, &c. shall be incapable of that place or room for that time or turn, &c. And it is further enacted, that at the time of every such election, presentation or nomination, as well this present Act, as the orders, and Statutes of the same places concerning such election, presentation or nomination, shall then and there be publickly read, upon pain to forfeit and lose the sum of forty pound, &c. whereof, the one moiety to him that will sue, and the other moiety to the Church, Colledge, &c.

I have read ancient Verses concerning Simony, and other corrupt entries into Churches, which are not unnecessary, in detestation of them, to remember.

*Quatuor Ecclesias portas intratur in omnes,  
Cæsaris & Simonis, Sanguinis, atque Dei.  
Prima patet magnis, nummo patet altera, charis  
Tertia, sed paucis quarta patere solet.*

Four doors hath every Church, and all but one forebod,

( Whereof unseen some may be peradventure )

Of Cæsar, Simony, of Kindred, and of God :

And each Church-man by one of these doth enter.

Great mens command doth open wide the first,

At next by money enter many one.

The third to weak Allies, but ( for the Church the worst, )

Gods dore doth open to a few or none.

7 E. 3. 39. a. 27 E. 3. 89. 29 E. 3. Present. al Eglise. Fitz. 17. 8 E. 2. present. 10. Fitz. N.B. 33. S. 24 E. 3. 29.

\* Jerome.

3 H. 6. tit. damages. 17 adjudge.

See the 2. part of the Instit. W. 2. c. 5. Lib. 6. f. 50 & 51. Lib. 5. 58, 59. Spec. cor.

a Vide Linwood ubi supra.

To conclude this Chapter with this, that Simony is odious in the eye of the Common Law : for a Gardian in socage of a mannor, whereunto an Advowson is appendant, shall not present to the Church, because he can take nothing for the presentation, for the which he may account to the heir, and therefore the heir in that case shall present of what age soever. And if an heir of tenant in capite, hath livery cum exitibus, yet shall the heir not present to an Advowson, because no issues or profits can be taken thereof.

\* Latro est qui aurum ex religione sectatur.

And the Common Law would have the Patron so far from Simony, as it denied him to recover damages in a Quare Impedit, or Assise of Darrein Presentment, before the Statute of W. 2. cap. 5.

a Simony is the more odious, because it is ever accompanied with Perjury, for the presentee, &c. is sworn to commit no Simony.

C A P.



## CAP. LXXII.

Of Monomachia, Single combate, Duell, Affrays,  
and Challenges, and of Private revenge.

**T**His single combate between any of the Kings subjects, of their own heads and for private malice, or displeasure, is prohibited by the Laws of this Realm: for in a settled State governed by Law, no man for any injury whatsoever, ought to use private revenge; for revenge belongeth to the Magistrate, who is Gods Lieutenant. And the Law herein is grounded upon the Law of God. Vindicta est mihi, & ego retribuam, dicit Dominus. Vengeance is mine and I will repay it, saith the Lord. Qui vindicari vult, inveniet vindictam à Domino, & peccata illius servans servabit. He that will revenge, shall find vengeance from the Lord, and he will surely keep his sins in remembrance.

Deut. 32. 35.  
Rom. 12. 19.  
Ecclesiasticus 28. 1  
Gen. 34. ver. 25. &  
30. of Simeon and  
Levi.

It is also against the Law of nature and of Nations, for a man to be Judge in his own proper cause, Judex in propria causa, especially in Duello, where fury, wrath, malice and revenge are the rulers of the judgment. See more of private revenge, cap. Misprision, in [ Crimen commissionis ]

But it is objected, that this single combat may be undertaken for revenge, *Object.* and preservation of the honour of the party grieved.

1. The honour or estimation of the party may more justly and notoriously *Respons.* be revenged, and repaired by the Magistrate in publick, then by the party in private. 2. There is nothing honorable, that is against the Laws of his Country, and the Law of Nature and Nations. 3. Whatsoever is against the Law of God is impious and dishonorable. 4. The eminent danger of the parties seeking private revenge: first, concerning the Souls of both of them, as well of him that killeth (who is vir sanguinis) as of him that is slain, and dieth in his malice and as to the World, he that slayeth is in worse case, then he that is slain. For the murderer loseth not only his Lands and Goods, but his life also and his honour, which he so much respected: for by his attainder his blood shall be corrupted, and if he were noble, or gentle before, he thereby becomes ignoble and base, and he that is slain by Law loseth none of them: so as hereof it is truly said, *Infelix pugna, ubi majus periculū incumbit victori, quam victo.* 5. Not only the Soul of man, but the Body also, was originally made to the Image of God, Quicunque effuderit humanum sanguinem, fundetur sanguis illius, ad imaginem quippe Dei factus est homo. Who so sheddeth mans blood, by man shall his blood be shed, for in the image of God made he man. Solus Deus, qui vitam dat, vitæ est Dominus; nec potest quisquam eam juste auferre nisi Deus, vel gerens auctoritatem Dei, ut Judex. And this was the reason, that amongst Christians it was not lawful for the Lord to kill his Willain.

*Infelix pugna, ubi majus periculum incumbit victori, quam victo.*  
Gen. 9. 6.

In ancient time so much the Law did respect honour, and order, as hear what Britton saith. Si trespas soit fait en temps de peace a Chivaliers, ou a auters gents honorables per Ribaudes ou auters viles persons, si le ferue soit per felony, &c. sauns desert del Chivalier, que le Ribau de perdra son poigne dount il trespassa.

Brit. c. 25. f. 49. b.

And many Ordinances, Laws, and Acts of Parliament, which do prohibit the pardon of wilful murder, are also grounded upon the Law of God, to the end none should offend in hope of pardon. \* Non accipies precium ab eo qui reus est sanguinis, statim enim & ipse morietur. Ne polluat is terram habitationis vestræ, quæ cruore maculatur; nec aliter expiari potest, nisi per ejus sanguinem,

Glouc. 6 E. 1. c. 9.  
2 E. 3. c. 2. 4 E. 3.  
c. 13. 14 E. 3. c. 15.  
13 R. 2. St. 2. c. 1.  
Read these Stat.  
\* Num. 35. 31. 33.



See before in the chapter of Murder.

nem, qui alterius sanguinem effuderit. Ye shall take no satisfaction for the life of a murtherer, which is guilty of death, but he shall be surely put to death: so ye shall not pollute the land wherein you are, for blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.

Mat. 26. 52.  
Apocal. 13. 10.

And this Law is confirmed by Christ himself in the Gospel, and by the last book of the holy Scripture. Omnes qui acceperint gladium gladio peribunt. Qui in gladio occiderit, oportet eum gladio occidi.

Affray. Trin. 10 E.  
3. Coram Rege,  
Rot. 87. North.

But albeit upon the single combate no death ensue, nor blood drawn, yet the very combate for revenge is an Affray, and a great breach of the Kings peace, an affright and terror to the Kings subjects, and is to be punished by fine and imprisonment, and to find sureties for their good behaviour: for it is Vi & armis, & contra pacem domini Regis, &c. and in respect of incroachment upon royal Authority for revenge, it is contra coronam & dignitatem.

4 H. 6. f. 10. 8 E. 4. f. 5.

An Affray is a publick offence to the terror of the Kings subjects, and is an English word, and so called, because it affrighteth and maketh men affraid, and is enquirable in a Let as a common Pleas. See the Statute of 2 E. 3. c. 3. where it is, [ en effrair de la pais, ] and the Writ grounded upon that Statute saith, In quorundam de populo terrorem, as it appeareth in F. N. B. fo. 249. f. and the register agreeth with the original, and therefore the printed book ( en affray de la peace ) must be amended.

Regula.

And if any subject by word, writing, or message challenge another to fight with him, this is also an offence before any combate be performed, and punishable by Law, and it is contra pacem, coronam, & dignitatem. For, Quando aliquid prohibetur, prohibetur & omne, per quod devinitur ad illud. Of such offenders may be punished in the Star-chamber, whereof there be many Presidents. Now when an affray is made by single combat, any stander by, that is no officer, may endeavour to part them, and prevent further danger, and the Law doth encourage them hereunto; for if they receive any harm by the Affrayors, they shall have their remedy by Law against them; and if the Affrayors receive hurt by the endeavouring only to part them, the standers by may justify the same, and the Affrayors have no remedy by Law. But if either of the parties be slain, or wounded, or so stricken, as he falleth down for dead, in that case the standers by ought to apprehend the party so slaying, wounding, or striking, or to endeavour the same by Hue and Cry, or else for his escape they shall be fined and imprisoned. But if the Sheriff, Justice of Peace, Constable, or other conservator of the peace do not part the Affrayors for the preservation of the Kings peace, and apprehend them being within his view, or do not his uttermost endeavour to part and apprehend them, they may be fined and imprisoned for their neglect thereof, for they may command others to assist them, and therefore the rule holdeth in them, Idem est facere, & nolle prohibere cum possis: & qui non prohibet, cum prohibere possit, in culpa est. And if any be commanded to assist them therein, and refuse or neglect the same, it is a contempt in them to be punished by fine and imprisonment.

8 E. 2. Cor. 295.  
22 Aff. pl. 56.

3 H. 7. 10. b.  
Bedingfields case.

Fleta l. 1. cap. 32.  
S. Duellum.  
2. part of the In-  
stit. W. 1. c. 40.  
Fleta ubi supra.

There is a duellum allowed by Law depending a suit for the trial of truth, whereof we have spoken in another place, and as here it appeareth, there is a duellum against Law: of both these an ancient Author saith thus, and first of the lawfull: Duellum est singularis pugna inter duos ad probandum veritatem litis, & qui vicerit probasse intelligitur; & quamvis iudicium Dei expectetur ibidem, quicumque tamen Monomachiam, i. e. singularem pugnam sponte susceperit vel optulerit homicida est, & contrahit mortale peccatum. Et eodem modo iudex qui auctoritate desert, vel præstat, omnesque accessores, & consulentes, faventes & auxiliantes, nec non & sacerdos qui dat benedictionem.

11 H. 3. Tit. droit  
Fitz. 57.

In a Writ of right, if the tenant wage battail by his Champion, and if the Champion after become blind by infirmity, and not ex stulticia, he shall be discharged of the battail. And if a man be appealed of felony, and gage battail, and after become blind, ut supra, he shall be discharged of the battail, because he becometh



becometh so by the Act of God. And if the Appellant after battail waged become blind upon any occasion, the Appellee in favorem vitæ shall go quit. When issue is joined to be tried by battail, and the trial by battail is become impossible by the Act of God, or by the default of the Appellant, the Appellee goeth free.

And this kind of battail, in case of Appeals and Writ of right, is by publick authority and course of Law, whereunto all the people by an implied consent are parties; and (as some hold) hath his warrant by the word of God by the single battail between David and Goliath, which was stricken by publick authority.

King E. 3. in the Sixteenth year of his Reign, having War with the French King for his right to the Kingdom of France, out of the greatness of his mind, for the love of his Subjects, the saving of Christian blood, and a speedy trial of the right, offered the single combate with the French King, but he refused it.

Afterwards also, after long and chargeable Wars between the Crowns of England and France, for the right of the Kingdom of France, it was an honourable offer which King R. 2. made to Charles the French King for saving of Christians guiltless blood, and to put an end to that bloody and lingering War: which we will rehearse in the very words of the Record it self.

*a* Rex dedit potestatem Johanni Duci Lancast' Avunculo suo de certis requestis seu oblationibus Carolo Regi Franc' faciend', viz. quod negotium bellicum inter predictos reges finiatur. 1. Per certamen personarum suarum. 2. Vel aliter inter personas suas cum tribus Patruis ipsorum ipsis utrinque adjunctis. 3. Aut alioquin quod dies congruus assignaretur & locus, quibus sub universali certamine potentiarum suarum finis bello imponi valeat. The Duke of Lanc' according to his Commission made these offers from the King of England to King Charles of France, but he was auditus, sed non exauditus; for King Charles liked none of these offers.

*b* And in Anno Domini 1196. Anno Regni Ricardi primi Octavo, Philip King of France sent this challenge to Richard the first, that King R. would choose five for his part, and he the King of France would appoint five for his part, which might fight in lists for trial of all matters in controversie between them for the avoiding of shedding of more guiltless blood. King Richard accepted the offer, with condition that either King might be of the number, but this condition would not be granted.

*c* These, and the like offers, as they proceeded from high courage and greatness of mind, so had they been lawful, if they had been warranted by publick authority.

*i* Regum c. 17.  
ver. 4. 5. & c.

*a* Rot. Francie  
7 R. 2 m. 24.  
The offer of R. 2.  
to King Charles  
of France.  
1. A single combat  
between the two  
Kings.  
2. Or a combat  
between the two  
Kings and three  
of their Uncles on  
either side.  
3. Or that a fit  
day and place  
might be assigned  
when under the  
universal conflict  
of both their armies,  
an end might be  
put to the war.  
*b* N. Trivet.  
*c* See the 2 part  
of the Institutes  
W. 1. ca. 20.



## CAP. LXXIII.

## Against going or riding armed.

3 E.3. cap.3.  
Pasch. 18 E.3.  
coram Rege. Rot.  
146. Midd.  
8 R.2. cap.13.  
the printed book  
is 7. but it ought  
to be 8 and fore-  
cited in 20 R.2.  
ca.1. Lib.5. fo.72.  
St. Johns case.

20 R. cap.2.

Pasch. 29 E.1.  
coram rege. Rot.  
101. Effex.  
Pasch. 18 E.1.  
coram Rege.  
Rot. 32. Glouc.

Ver. mag. cart.  
2. part. fo. 40. b.  
Rot. Parl. 6 E.3.  
nu 2. & 3.  
13 E.3. nu. 2.  
14 E.3. nu. 2.  
15 E.3. nu. 2.  
17 E.3. nu. 2.  
18 E.3. nu. 2.  
25 E.3. nu. 50.  
Parl. 1. & 25 E.3.  
Parl. 2. nu. 5.  
a 11 H.7. fo. 23.  
Vide before cap.  
Homicide. Brook  
Coron. 229. See  
24 H.8. cap. 13.  
Justs. Turnles,  
Bariers, &c.  
b Pasch. 18 E.3.  
coram rege. Rot.  
146. Nota bene.  
c 25 E.3. cap. 2.  
d See before cap.  
High treason. verb.  
Ou si home levy  
guerre. fo. 9.

**Item.** **I**T is enacted, that no man, great or small, of what condition soever he be, (except the Kings servants in his presence, and his ministers in executing *des mandements le Roy*, or of their Office, and such as be in their company assisting them, and also upon a Cry made for arms to keep the peace, and the same in such places where such things happen) be so hardy to come before the Kings Justices, or other the Kings Ministers doing their office, with force and arms, nor bring force in affray of the people, nor to go nor ride armed by night nor by day, &c. before the Kings Justices, or in any place whatsoever, upon pain to forfeit their armor to the King, and their bodies to prison at the Kings pleasure, and to make fine and ransome to the King, &c.

Upon this Statute two things fall into consideration. First, what the Common Law was before the making of this Statute. Secondly, the true sense and exposition of this Act. For it appeareth by a Record in 29 E.1. quod non liceat torneare, bordeare, iustas facere, aventuras guerare, seu ad arma presumere, sine licentia Regis. See Britton fo. 29. b. It was called turneamentum decursus, of turning and winding, in respect of the agility, as well of the horse, as of the man. For in those days this deed of Chivalry was at random, whereupon great peril ensued. Therefore in the Reign of E.3. for safety the Tilt was devised. See the Statute of 7 E.2. De defensione portandi arma, and the Statute of W.1. cap. 9. & cap. 17. W.2. cap. 39. and the expositions upon the same.

It is Lex & consuetudo Parliamenti, that wheresoever the Parliament is holden, Proclamation should be made forbidding wearing of Armor, and exercise of plays and games of men, women or children, in or about the City, or place where the Parliament is holden, lest the proceedings in the high Court of Parliament pro bono publico, should thereby be hindered or disturbed.

a If any by mutual assent do use Justs or Turnements, or to play at sword and buckler, or any other deeds of arms, and the one killeth the other, this is Felony, for that it is not lawful to use them without the Kings licence; which agreeth with the record aforesaid, of 29 E.1.

b Willus Jordan inventus fuit vagans armatus de platis, attachiatus, &c. comperit per Juratores, quod minatus fuit per quosdam ignotos, & quod pro salvatione vite sue, platas predictas apposuit super corpus suum, tamen invenit securitatem pro bono gestu suo.

c The clause of the Statute of 25 E.3. concerning this matter, we have reserved to this place, viz.

d And if per case any man of this Realm ride armed covertly or secretly with men of arms, against any other to slay him, or rob him, or to take and keep him till he hath made fine or ransome, it shall not be adjudged Treason, but it shall be judged Felony or trespass, according to the Laws of the Realm of old time used, and according as the case requires. And if in such case, or other like, before this time any Justices have judged Treason, and for this cause the lands and tenements have come into the Kings hands as forfeit, the chief Lords of the fee shall have the escheats of the tenements holden of them, whether that the same tenements be in the Kings hands, or in others, by gift, or in other manner. Sa-

ving



ving always to our Lord the King, the year and the waft, and the forfeitures of chattels, which pertain to him in the cafes abovenamed. And that writs of *Scire facias* be granted in fuch cafe againft the land tenants without other original, and without allowing any protection in the faid fuit. And that of the lands which be in the Kings hands, writs be granted to the Sherifs of the Counties where the lands be, to deliver them out of the Kings hands without delay.

Concerning the point of Felony it muft be obferved, that at the making of that Statute, and by the Laws of the Realm of old time ufed in fuch cafe, when any purposed to flay, and declare by fuch overt act, voluntas reputabatur pro facto, as hath been faid befoze; and fo is this branch concerning that point to be underftood.

Vide cap. High Treafon verb. *Faci compaffer*, fo. 2.

And that writs of *Scire fac.* be granted. ] Here it may appear what fpeedy remedy by *Scire fac.* the makers of this Law gave for reftitution to be made, whereby any of the Juftices had in any of the cafes mentioned in this branch judged it Treafon which is declared by this law to be againft Law.

*Scire fac.*  
Note for reftitution. See hereafter cap. Reftitution.

Now let us perufe the words of the faid Act of 2 E.3.

His Minifters in executing. ] By the order of the Common Law and Statutes of the Realm, the Sherif, or other Minifter of the King in execution of the Kings writs, or proces of Law, might after refiftance take poffe comitatus. For, Sequi debet potentia legem, & non antecedere.

W.1.ca.9. & 17.  
W.2.cap.39.  
18 E.2. Execution, 251.  
19 E.2. *ibid.* 247.  
3 H.7. fo. 1. & 10. b.  
14 H.7.8.  
Lib. 5. fo 91. Semaynes cafe.

Des mandemens le Roy. ] That is, of the Kings writs, and proces of Law, secundum legem & confuetudinem Angliæ. Though in this Act there be three fpecial exceptions, yet the Law doth make another exception, and that is, to afsemble force to defend his houfe, as hereafter fhall be faid.

To come before the Kings Juftices, or other the Kings Minifters doing their office, with force and arms. ] Bracton doth notably write of the diverfity of forces, viz. that there is Vis expulfiva, perturbativa, inquietiva, ablativa, compulfiva, &c. which you may read in him. And then (which is pertinent to our purpofe) he faith: Est etiam vis armata, (armis dejectum dico qualitercunque fuerit vis armata) non folum fi quis venerit cum telis, verum etiam omnes illos dicimus armatos, qui habent cum quo nocere poffunt. Telorum autem appellatione omnia, in quibus fingulis homines nocere poffunt, accipiuntur: fed fi quis venerit fine armis, & ipfa concertatione ligna fumpferit, fufles, & lapides, talis dicetur vis armata; Si quis autem venerit cum armis, armis tamen ad dejiendum non ufus fuerit, & dejecerit, vis armata dicitur effe facta; Sufficit enim terror armorum, ut videatur armis dejeciffe. Agræing with that of the Poet,

Bracton lib 4. fo. 162.

Jamque faces & faxa volant, furor arma ministrat.

Britton faith, Nous volons, que tous gents plus ufent judgement, que force.

Virgil.  
Britton 116. a.

Nor to bring force in affray of the (paais, i) Countrey. ] This Act is notably expounded by the writ in the Register, and F. N. B. for by that writ it appeareth, that if any do enter into, or detain with force any houfes, lands, or tenements, the party grieved may have a writ upon this Statute, directed to the Sheriff, by force of which writ, if the Sheriff find the force, then if any after proclamation made, (which proclamation is by reasonable construction to be made for avoiding of bloodshed) fhall difobey, or if it be found by inquisition, the Sheriff is to feize their arms and weapons, and to arreft and take the offenders and commit them to prifon, &c. But note the Sheriff cannot reftore the party grieved upon this writ to his poffeffion, a no more then he can upon the writ de vi laica removenda, but reftitution muft be made by force of the Statutes of 8 H. 6. and 21 Jac. b And yet in fome cafe a man may not only ufe force and arms, but

See the Chapter next before. verb. *Affraye*.  
Registrum.  
F. N. B. 249. f.  
Nota.  
Vide lib. 5. fo 9. Semaynes cafe.  
F. N. B. 54.  
a 8 H. 6. cap 5.  
21 Jac. cap 25.  
b 3 E. 3. cor. 303.  
305.  
26 Aff. p. 22.  
21 H. 7. 30.



21 H. 7. 39.  
Lib. 5. fo. 91. b.  
Semaynes case.

assemble company also. As any may assemble his friends and neighbours, to keep his house against those that come to rob, or kill him, or to offer him violence in it, and is by construction excepted out of this Act: and the Sheriff, &c. ought not to deal with him upon this Act; for a mans house is his Castle, & domus sua cuique est tutissimum refugium; for where shall a man be safe, if it be not in his house? And in this sense it is truly said,

*Armaque in armatos sumere iura sinunt.*

But he cannot assemble force, though he be extremely threatened, to go with him to Church, or Market, or any other place, but that is prohibited by this Act.

24 E. 3. fo. 33.

[ Nor to go armed by night or by day, &c. before the Kings Justices in any place whatsoever. ] Sir Thomas Figett Knight went armed under his garments, as well in the Palace, as before the Justices of the Kings Bench: for both which upon complaint made, he was arrested by Sir William Shardishill Chief Justice of the Kings Bench, and being charged therewith, he said that there had been debate between him and Sir John Trevel Knight in the same week, at Pauls in London, who menaced him, &c. and therefore for doubt of danger, and safeguard of his life, he went so armed. Notwithstanding the Court upon their view awarded, that the arms were forfeited, and thereupon the same were seized, and he commanded to ward in the Marshalse during the Kings pleasure. Sir Thomas prayed to find mainprize, which was denied, until the pleasure of the King was known, because he was imprisoned during the Kings pleasure, according to this Statute.

24 E. 3. ubi supra  
Vide the 4. part  
of the Institutes.  
cap. Leet.  
20 R. cap. 1.  
Vid. in dorf. clauf.  
2 E. 2. 19. 22.

[ Upon pain to forfeit their Armor, &c. ] It appeareth before by the case of Sir Thomas Figett, that the offender was to be punished according to this Act, but by forfeiture of the armor and imprisonment; but the Statute of 20 R. 2. cap. 1. doth add fine and imprisonment.

[ And that the Kings Justices, in their presence, &c. ] So did Sir William Shardishill, as is abovesaid.

[ And other Ministers in their Bailiwicks, &c. ] That is to say, Sheriffs, Bailiffs of liberties, &c.

[ Lords of Franchises. ] And their Bailiffs, Maiors, and Bailiffs of Cities and Boroughs within the same Cities and Boroughs, and Borough-holders, Constables, and Wardens of the peace within their Wards shall have power to execute this Act. And the Justices assigned at their coming down shall inquire how such officers and Lords have exercised their offices in this case, and to punish them whom they find, that have not done that which pertained to their office. See 12 R. 2. cap. 6.

Registrum.  
F. N. B. 249. f.  
24 E. 3. fo. 33.

Vide 36 E. 3. ca. 9.  
Simile.

It is to be observed, that upon this Statute by the resolution of the Judges a writ was framed, and inserted into the Register, when any with force and arms enter any lands and tenements, or detain the same with force and arms, directed to the Sheriff, reciting the force, and our Act, (and saith) Nos statutum prædictum inviolabiliter observari, & idem infringentes juxta vim, & effectum ejusdem statuti castigare facere volentes & punire, Tibi præcipimus, &c. publice proclamari facias, &c. As in the Writ. And here is a secret in Law, that upon any Statute made for the Common peace, or good of the Realm, a writ may be devised for the better execution of the same, according to the force and effect of the Act.

Note, Proclamations are of great force, which are grounded upon the Laws of the Realm.

## C A P. LXXIV.

## Of Perjury and subornation of Perjury, and incidently of Oaths.

**E**Very person which shall unlawfully and corruptly procure any witness to commit any wilful, and corrupt perjury in any matter or cause depending in suit, and variance, by any writ, action, bill, complaint, or information in any of the Kings Courts of Chancery, Star-chamber, or in any of the Queens Majesties Courts of Record, or in any Leet, view of Frankpledge, ancient demesne Court, Hundred Court, Court Baron, or of the Stannary, or elsewhere within any of the Kings Dominions of *England* or *Wales*, or the Marches of the same: or shall unlawfully, and corruptly procure and suborn any witness to testifie *In perpetuam rei memoriam*; That then every such offender shall forfeit the sum of forty pound, &c. And if any person either by subornation, or by their own act, consent or agreement, wilfully and corruptly commit any manner of wilful perjury by their deposition in any of the Courts above-mentioned, or being examined *ad perpetuam rei memoriam*; Then every person so offending shall lose and forfeit twenty pound, and to have imprisonment by the space of six moneths without bail or mainprise, &c. the one moiety of all which forfeitures to be to the Queen, and the other moiety to such person or persons as shall be grieved, &c.

Albeit by the Common Law trial of matters of fact are by the verdict of twelve men, &c. and deposition of witnesses is but evidence to them; yet, for that most commonly Juries are led by deposition of witnesses, perjury of witnesses was severely punished by the ancient Laws of this Realm; perjury it self being forbidden by the Law of God, *a* Non perjurabis in nomine meo, nec pollues nomen Dei tui. And again, Non perjurabis, reddes Domino juramenta tua.

A false witness is called Perjurus, quia perperam jurat. *b* Perjury before the Conquest was punished sometime by death, sometime by banishment, and sometime by corporal punishment, &c.

*c* Alguns sont punies per cowper de langues, come soiloit estre de faux testimoignes. But too severe Laws are never duly executed. Afterwards it came to be more mild, for *d* Fleta saith, Atrox injuria est quæ omnium mobilium amissionem confert, &c. de perjurio convictis.

Afterwards it came to fine and ransom, and never to bear testimony.

Et ceux se voillont perjurer pur lower, ou pur aucun doute de aucun, & ceux sont reints a nostre volunt, & mes ne soient crus per nul serement. And it appeareth in 7 H. 6. that he that is perjured shall be fined and imprisoned.

Thomas Vigrus, & duo alii sunt culpabiles, &c. perjurati pro fractione corbellorum Johannæ de Huntingfield in sepeciali piscaria sua in aqua de Hadfeld.

Qui testes de perjurio convincere satagit, multo illis plures, producere necesse habet.

The punishment of Perjury in Juries for a false verdict was so severe by the Common Law, as few or no Juries were upon just cause convicted, for the

5 Eliz. cap. 9.

*a* Exod. 20. 13.

Levit. 19. 11.

Marth. 5. 34.

*b* Leges Edw. c. 3.

Ethelst. c. 10 25.

Edm. c. 6. Canuti

c. 6. & 35 &c.

Edw. & Gru. c. 11.

*c* Mir. c. 4. §. de

paines.

Int. Leg. Canuti c.

15. Conviciatori

Lingua exciditur.

*d* Fleta li. 2. cap. 1.

§. Itē Atrox, &c.

Britton f. 38. 237.

238. 7 H. 6. f. 25.

Hil. 8 E. 1. in Com-

muni banco Rot.

38. Essex. Fortescue

cap. 32.

Vide 1. part of the

Institutes. Verb.

Attaint. Sect. § 14.

Glanvil. lib. 2. c. 19

6 H. 3. Attaint. 72. Brañ. l. 4. f. 292. b. Fleta lib. 5. cap. 21. Britton fo. 245. 8 E. 2. Judgment. 196. 16 E. 3. Ibidem 109. Mich. 3 H. 5. Coram Rege Rot. 14. & 49. Fortescue ca. 29.

judgment



judgment against them was, 1. Quod amodo amittant liberam legem imperpetuum. 2. Non trahantur in testimonium veritatis. 3. Bona & catalla sua forisfaciant Regi. 4. Terræ & tenementa sua capiantur in manus Regis. 5. Quoad uxores & liberi sui amodo amoveantur. 6. Quod terræ & tenementa sua extirpentur, &c. 7. Quod capiantur, & in Gaolam detrudantur. Which sheweth how odious perjury was in the eye of the Law: and this Law doth yet remain in force; but a milder punishment is set down by the Statute of 23 H. 8. wherein the party grieved hath election to ground his Writ of Attaint upon this Statute, or to take his remedy at the Common Law.

23 H. cap. 3.

For perjury concerning any temporal act, the Ecclesiastical Court hath no jurisdiction; and if it be concerning a spiritual matter, the party grieved may sue for the same in the Star-chamber. See the Statutes of 3 H. 7. cap. 1. 11 H. 7. ca. 25. 32 H. 8. c. 9. And when you have read the case in Mich. 7 & 8 Eliz. Dier 242, 243. you will confess how necessary the reading of ancient Authors and Records is, and the continual experience in the Star-chamber is against the opinion conceived there.

2 H. 4. 10. 11 H. 4. 88. 20 E. 4. 10. b. 22 E. 4. 13 El. Dier 302. Mich. 7 & 8 El. Dier 242, 243.

Mich. 10 Ja. Rowl. Ap Elizaes case. in cam. Stellat. See hereafter Verb. Information.

And Mic. 10 Jac. in the Star-chamber in the case of Rowland Ap Eliza, it was resolved, that perjury in a witness was punishable by the common law, as hereafter shall be shewed more at large. But now let us peruse the words of the statute.

Mich. 40 & 41 El. Lib. 5. f. 99. in Flowers case.

¶ By any Writ, Action, Bill, Complaint, or Information. ] Out of these words are perjury, and subornation of perjury upon an Indictment for the King (for example of Riot) as it was resolved in Flowers case, because that perjury upon an Indictment is not within the Statute. But seeing perjury was an offence punishable by the Common Law, though the Indictment of Flower grounded upon this Statute was overthrown, yet is such perjury upon an Indictment punishable, and most commonly punished in the Star-chamber.

The case of Rowland Ap Eliza in the Star-chamber, ubi supra.

¶ Information. ] By this it appeareth, that perjury committed in an Information exhibited by the Kings Attorney, or any other for the King, by any witness produced on the behalf of the King, is punishable either by this Act or by the Common Law. And so it was resolved in the said case of Rowl. Ap Eliza, which was this. The Kings Attorney preferred an Information in the Exchequer against Hugh Nanny Esq; the father, and Hugh Nanny the son, and others for intrusion and cutting down a great number of trees, &c. in Penrose in the County of Merioneth. The Defendant pleaded not guilty, and the trial being at the bar, Rowl. Ap Eliza was a witness produced for the King, who deposed upon his oath to the Jury, that Hugh the father and Hugh the son joyned in sale of the said trees, and commanded the Wendes to cut them down: upon which testimony the Jury found for the King, and assessed great damages, and thereupon judgment and execution was had. Hugh Nanny the father exhibited his bill in the Star-chamber at the Common Law, and charged Rowl. Ap Eliza with perjury, and assigned the perjury, in that he the said Hugh the father never joyned in sale, nor commanded the Wendes to cut down the trees, &c. And it was resolved, First, That perjury in a witness was punishable by the Common Law. Secondly, That perjury in a witness for the King was punishable by the Common Law, either upon an Indictment, or in an Information, or by this Act in an Information. And the said Rowland Ap Eliza was by the sentence of the Court convicted of wilful and corrupt perjury.

But for our more orderly proceeding, let us define, or describe what Perjury is in legal understanding, both upon this Statute, and at the Common Law.

Perjury described

Perjury is a crime committed, when a lawful oath is ministered by any that hath authority, to any person, in any judicial proceeding, who sweareth ablutely, and falsely in a matter material to the issue, or cause in question, by their own act, or by the subornation of others. Now let us peruse the branches of this description.



¶ [A lawful Oath.] This word Oath is derived of the Saxon word Eoth; and is expressed by three several names, viz. 1. Sacramentum, à sacra, & mente, because it ought to be performed with a sacred and religious mind. Quia jurare, est Deum in testem vocare, & est actus divini cultus. 2. Juramentum à Jure which signifieth Law and right, because both are required and meant, or because it must be done with a just and rightful mind. 3. Jusjurandum compounded of two words, à jure & jurando, in the Common Law Sacramentum is most commonly used: in our books and ancient Statutes published in French, Serement, of the French word Serment is used.

An Oath is an affirmation or denial by any Christian of any thing lawful and honest, before one or more, that have authority to give the same for advancement of truth and right, calling Almighty God to witness, that his testimony is true. And it is twofold, either assertorium ut de præterito, sicut testes, &c. seu promissorium de futuro, sicut judices, justiciarii, officarii, &c. So as an oath is so sacred, and so deeply concerneth the consciences of Christian men, as the same can not be ministered to any unless the same be allowed by the Common Law, or by some Act of Parliament; neither can any Oath allowed by the Common Law or by Act of Parliament be altered, but by Act of Parliament. It is called a corporal oath, because he toucheth with his hand some part of the holy Scripture.

The oath of the Kings Privy Council, the Justices, the Sheriff, &c. was thought fit to be altered and enlarged, but that was done by Authority of Parliament. For further proof whereof, and of the matters abovesaid, see the Statutes here quoted, and it shall evidently appear, that no old oath can be altered, or new oath raised without an Act of Parliament, or any oath ministered by any that have not allowance by the Common Law, or by an Act of Parliament.

cap. 18. 2 H. 5. cap. 7. 8 E. 4. cap. 2. 1 R. 3. cap. 6. & 15. 19 H. 7. cap. 14. 14 H. 8. c. 2. 23 H. 8. cap. 5. 32 H. 8. cap. 46. 2 E. 6. cap. 13. 27 El. cap. 12. See 3 Jac. c. 4.

And to conclude this point, It was resolved in Parliament holden in Ann. 43 Eliz. that the Commissioners concerning Policies of assurances could not examine upon oath, because they had no warrant either by the Common Law, or by any Act of Parliament: and therefore it was enacted at that Parliament, that it should be lawful for the said Commissioners to examine upon oath any witness &c. At this Parliament I attended, being then Attorney general. And oaths that have no warrant by Law, are rather nova tormenta quam sacramenta, and it is an high contempt to minister an oath without warrant of Law, to be punished by fine and imprisonment. And therefore Commissioners (that sit by force of any Commission that is not allowed by the Common Law, nor warranted by authority of Parliament) that minister any oath whatsoever; are guilty of an high contempt, and for the same are to be fined and imprisoned: \* For Commissions are legal, and are like the Kings Writs, and none are lawful but such as are allowed by the Common Law, or warranted by some Act of Parliament: and therefore Commissions of new Inquiries, or of novel invention are against Law, and ought not to be put in execution.

24 E. 3. Com. Br. 3. 29 E. 3. 30, 31. 18 E. 3. c. 1 & 4. 18 E. 3. Stat. 2. c. 6. Rot. Parl. 18 E. 3. n. 47. 28 E. 3. c. 19. Rot. Parl. 50 E. 3. n. 56. 61. 2 H. 4. n. 22. optime 4 H. 4. c. 9. Rot. Parl. 9 H. 4. nu. 36. 42. Ass. p. 5. 12. 42 E. 3. c. 3. Dier 1 El. 106. Scrog. case.

And albeit divers of the Kings Courts in England proceed not according to the course of the Common Law, yet are their proceedings allowed either by the Common Law, or by some Act of Parliament.

Certain poor Christians that had spoken against the worshipping of Images were by the Bishops sworn to worship Images: which oath was against the expresse Law of God, and against the Law of the Land, for that they had no war-

Levit. 26. 1. &c. Esay 44. 9. &c. Jer. 10. 3. &c. Sapient. 13. 10. &c. August. Epist. 110. ad Jan. cap. 11. idem de fide & symbolo, cap. 7. idem in Psal. 113. con. 2.

Serment or sacrament, i. Sacramentum. Fleta l. 5. c. 2. Brit. c. 97. f. 23. 8. b. 19. 74. 134. 155. 236. b. Fleta lib. 5. cap. 21.

So resolved An. 26 El. in the case of the undersheriff

Magna Cart. c. 6. Stat. Pr. 17. F. N. B. 264. W. 1. 3 E. 1 c. 40. 18 E. 3. ubi sup. 5 R. 2. cap. 12. 6 R. 2. ca. 12. 4 H. 4. cap. 5. 32 H. 8. cap. 46.

\* Commissions. Regist. 1, 2, 3. 125, 126. 88. 128. 138. 161. F. N. B. 110, 111. 2 E. 3. 26. Pasch. 44 E. 3. Coram Rege Rot. 2

Dorff. claus. Anno 19 R. 2. n. 17. \* Exod. 20. 4. Deut. 5. 6. Psalm 86. 11. 95. 7. 115. 4



Gregor. lib. 9.  
Epist. 9.

rant to minister the same. Let the childzen of the Church be called and instructed by the testimonies of the holy Scripture, that nothing made with hands may be worshiped. See the Second part of the Institutes, Marlbridge cap. 14. & 19. concerning oathes, and specially out of Glanville, concerning the Nobility of this Realm, and W. 1. c. 38.

Bracton l. 4. f. 186

¶ By any having authority. ] For where the Court hath no authority to hold plea of the cause, but it is coram non iudice, there perjury cannot be committed. For as Bracton saith, Sacramentum habet in se tres comites, Veritatem, Justitiam, & iudicium: veritas habenda est in iurato; justitia & iudicium in Iudice.

Jer. 4. 2.

And all this is grounded upon the Law of God, Jurabis vivit Dominus, in veritate & iudicio, & in justitia.

Trin 12 Ja. Lib. 11  
f. 98. Bagges case.

¶ In any judicial proceeding. ] For though an Oath be given by him that hath lawful authority, and the same is broken, yet if it be not in a judicial proceeding, it is not perjury punishable either by the Common Law, or by this Act, because they are general and extrajudicial, but serve for aggravation of the offence, as general Oathes given to Officers or Ministers of Justice, Citizens, Burgesses, or the like, or for the breach of the Oath of Fealty or Allegiance, &c. they shall not be charged in any Court judicial, for the breach of them afterwards. As if an Officer commit extortion, he is in truth perjured, because it is against his general Oath: and when he is charged with extortion, the breach of his Oath may serve for aggravation.

If a man calleth another perjured man, he may have his action upon his case, because it must be intended contrary to his Oath in a judicial proceeding: and so it is termed in our Statute of 5 Eliz. but for calling him a forsworn man, no Action doth lye: because the forswearing may be extrajudicial. If the defendant perjureth himself in his answer in the Chancery, Exchequer Chamber, &c. he is not punishable by this Statute, for it extendeth but to witnesses, but he may be punished in the Star-chamber, &c.

Bracton li. 4. f. 289  
Fleta lib. 5. c. 21.

¶ Who sweareth absolutely. ] For the deposition must be direct and absolute, and not ut putat, nor sicut meminit, nor ut credit, &c.

Gurnies case in  
the Star-chamber,  
Mic. 9 Jac.

¶ And falsely. ] Herein the Law taketh a diversity between falshood in expresse words, and that is only within this Statute, and falshood in knowledge or mind, which may be punished though the words be true. For example: damages were awarded to the plaintiff in the Star-chamber according to the value of his goods riotously taken away by the defendant: the plaintiff caused two men to swear the value of his goods, that never saw nor knew them; and though that which they swore was true, yet because they knew it not, it was a false oath in them, for the which both the procurer and the witnesses were sentenced in the Star-chamber.

Fleta ubi supra.

For (as Fleta saith) Ad rectum juramentum exiguntur tria, veritas, conscientia, & iudicium: truth and conscience in the witness, and judgment in the Judge. And herewith agreeth Bracton, that a man may swear the truth, and yet be perjured. Dicunt quidam verum, & mentiuntur, & pejerant, eo quod contra mentem vadunt. Ut si Judeus juraverit Christum natum ex virgine, perjurium committit, quia contra mentem vadit, quia non credit ita esse ut jurat.

Bracton l. 4. f. 289.

Equivocation.  
Britton fo. 237.  
Job 13. 7.

By the ancient Law of England, in all Oaths, Equivocation is utterly condemned; for Britton saith, Serement est honest, & leal, quant sa conscience demesne accord a chefcun point a la bouche ne pluis, ne meins, & fil ad discord, donques est perillous. And this is grounded upon the Law of God. Nunquid Deus indiget mendacio vestro, ut pro illo loquamini dolos, aut decipietur ut homo vestris fraudulentis? Perjuri sunt qui servatis verbis juramenti decipiant aures eorum qui accipiunt. If equivocation should be permitted tending to the subversion of truth, it would shake the foundation of Justice.

¶ In



[ In a matter material to the issue, or cause in question. ] For if it be not material, then though it be false, yet it is no perjury, because it concerneth not the point in suit, and therefore in effect it is extrajudicial. Also this Act giveth remedy to the party grieved, and if the deposition be not material, he cannot be grieved thereby. And Bracton saith, Si autem Sacramentum factum fuerit, licet falsum, tamen non committit perjurium.

Bract. lib. 4. 188.  
Fleta lib. 5. ca. 21  
accord.

[ By their own act, &c. ] This clause of the Statute, although it be more general then the clause of procurement, yet seeing the first clause concerning procurement, extended not to perjury upon an Indictment: this clause by construction shall extend no further then the former. See Lib. Intr. Coke fo. 164, 165. 362.

Flowers case,  
ubi supra.

[ Or by the subornation of other. ] Subornation is derived of Sub and orno, and ornare in one of his significations is to prepare, so as subornare is as much as to say, as to prepare secretly, or underhand. Est autem subornare quali subtus in aure ipsum male ornare, unde subornatio dicitur de falli expressione; aut de veri suppressione. And here is to be noted, that in the judgment of the Parliament Plus peccat author quam actor; For the suborner forfeits 40 l. and he that is suborned, but 20 li. Fleta saith, Si servus cogatur scienter a Domino perjurare. uterq; est perjurus; qui autem provocat eum ad jurandum quem scit falsum jurare vel exigit, vel recipit juramentum, talis vincit homicidam, quia homicida solum corpus occidit, iste vero animam suam & alterius: & peccat, qui alium audit falsum jurare, scit, & tacet.

Fleta lib. 5. ca. 21;

In an Action of perjury brought upon this Statute, the plaintiff counted, that the defendant falso dixit & deposuit, &c. and in what action, upon what issue, and in what Court, &c. and concluded, & sic commisit voluntarium & corruptum perjurium. And it was ruled by the whole Court, that the Count was vicious and insufficient for two causes. First, for that in this Act of 5 Eliz. as here it appeareth, there be two distinct clauses, one if he be perjured of his own proper act; the other, if he be perjured by subornation, &c. and the plaintiff ought to declare in certainty, within which of them the defendant is perjured. The second cause was, where the Act saith [ wilfully and corruptly commit any wilful perjury, &c. ] and the words of the Count be, falso dixit & deposuit: and saith not, voluntarie & corrupte; and the said clause, & sic commisit voluntarium & corruptum perjurium, salveh not the former insufficiency, because it is but a conclusion upon the former matter.

Mic. 29. & 30.  
Eliz. coram rege.

And the like judgment was given in this Court, as to this latter point, Anno 27 Eliz. in the case of one Mellers of Lincoln-shire.

27 Eliz. Mellers  
case.

[ That as well the Judge and Judges of every such of the said Courts. ] If the perjury be committed by any witness deposed in the Chancery, &c. and the party grieved commenceth his suit there upon this Act, the same and all the proceedings thereupon must be in Latin according to the course of the Common Law, and the defendant shall not be sworn to his answer, nor examined upon interrogatories (unless the Court of Chancery had before this Act used to examine perjuries, and to examine the defendant upon oath upon interrogatories before this Act, for then such jurisdiction had been saved by a Proviso in this Act) and when issue is joined, it shall be tried in the Kings Bench, as by Law it ought, & sic de similibus.

Dier 12 Eliz. 288;

If a man be taken for a suspect, and he is not indicted, nor is there any certain cause to arraign him, the Court may give him the Oath of Allegiance, viz. Que il sera foial & loyal, &c. Vide 45 E. 3. 17. b. simile devant cap. 7. De Conjuracion, &c. in fine 22 E. 4. 36. 20 H. 6. 37. Attorney abjure.

25 E. 3. 42. b.  
cor. 131.

See more of Perjury and of Witnesses in the fourth part of the Institutes, Cap. Commissioners for examination of witnesses. See 21 Jac. cap. 20. a good Act to prevent and reform profane swearing.



## CAP. LXXV.

## Of forging of Deeds, &amp;c.

5 Eliz.cap.14.

**I**F any person or persons upon his or their own head or imagination or by false conspiracy or fraud with others, shall wittingly, subtilly and falsly forge, or make, or subtilly cause, or wittingly assent to be forged or made any false Deed, Charter or Writing sealed, Court Roll, or the Will of any person or persons in writing; to the intent that the state of freehold or inheritance of any person or persons, of, in, or to any lands, tenements or hereditaments, free-hold or copy-hold, or the right, title, or interest of any person or persons of, in, or to the same, or any of them, shall or may be molested, troubled, defeated, recovered, or charged, &c. Or shall pronounce, publish, or shew forth in evidence any such false and forged Deed, Charter, Writing, Court-Roll, or Will, as true, knowing the same to be false and forged, as is aforesaid, to the intent above remembred, and shall be thereof convicted, either upon action or actions of forger of false Deeds to be founded upon this Statute, at the suit of the party grieved, or otherwise according to the order and due course of the Laws of this Realm, or upon bill, or information, to be exhibited into the Court of Star-chamber, &c. shall pay to the party grieved his double costs and damages, &c. And be it further enacted, that if any person or persons, upon his or their own head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly, and falsly forge or make; or wittingly, subtilly, and falsly cause or assent to be made or forged, any false Charter, Deed, or Writing, to the intent that any person or persons, shall or may have or claim any estate or interest for term of years, of, in, or to any Mannors, lands, tenements, or hereditaments, not being copy-hold; or any Annuity in fee-simple, fee-tail, or for term of life, lives or years, or shall make or forge as is aforesaid, any Obligation or Bill Obligatory, Acquittance, Release, or discharge of any debt, account, action, suit, demand, or other thing personal, or shall pronounce, &c. *ut supra*. That then he shall pay, &c.

And be it further enacted, that if any person or persons being hereafter convicted or condemned of any of the offences aforesaid, &c. shall after any such his or their conviction or condemnation estoons commit or perpetrate any of the said offences in form aforesaid, that then every such second offence or offences shall be adjudged Felony, &c.

We have spoken of forgery or counterfeiting of the Great Seal of the Kings Coin, &c. which are declared by the Statute of 25 E. 3. to be High Treason: Now we are to treat of forgeries of Deeds, Charters, and writings sealed, &c. in the case of Subjects. And first, after our accustomed manner how these offences were punished of ancient time.

Mir.cap.4.  
§ Des paines.  
Et cap.5. §.1.

The Mirroz saith, Afcuns peches sont punies per perde de poulce, come est de faulx notoires, &c. *peccans membrum puniebatur*. (Car pur fauxer de seale ne fèrr' judgement mortel.)

Britton

Britton saith, Judgment destre treyne, & de suffer mort doit encount' ceux coure, Britton fo. 16. a. & b.  
 q̄ p appeales de Felony sont atteints, q̄ ilz eyent le seale lour seigniour, qui main-  
 paist ils sont, ou q̄ homes p homage counterfait, ou autrement fause, &c. Et si  
 tiels manners des faits soient atteints a nostre suit, si soient pur le seale fause juges  
 a judgment de pillory, ou de perdre le oraile si le fait soit simple : & si le fait soit  
 grand & leyde, sicome touchant diherison ou perpetual damage, si soient juges a  
 la mort.

Fleta saith, Crimen falsi dicitur, cum quis accusatus fuerit vel appellatus, quod Fleta lib. 1. ca. 22.  
 sigillum Regis, vel domini sui de cujus familia fuerat, falsaverit, & brevia inde  
 consignaverit; vel cartam aliquam vel literam ad exhæredationem domini &c.  
 sigillaverit; in quibus causis si quis convictus fuerit, detractari meruit & suspendi.  
 Et quod de hujusmodi falsariis dicitur, de sigilla adulterina Cartis & Literis ap-  
 ponentibus dicatur id idem. And in another place he saith, Est etiam atrox in- Fleta lib. 2. ca. 1.  
 juria quæ perpetuam inducit infamiam cum poena pillorari vel tumbrelli, quæ quan-  
 doque fit per falsarios sigillorum (dum tamen non regis nec domini sui de cujus  
 fuerit familia.)

We have the moze willingly repeated these ancient punishments, to shew  
 how in part, (viz. concerning the Cars and Pillory) this Act for the first offence,  
 concurrerth with the ancient punishment.

¶ Forge. ] To forge is metaphorically taken from the Smith, who beat-  
 eth upon his Anvil, and forgeth what fashion or shape he will: the offence (as it  
 appeareth before) is called Crimen falsi, and the offender falsarius, and the Latin  
 word to forge is fallare or fabricare. And this is properly taken when the Act is  
 done in the name of another person.

The Statute of 1 H. 5. hath these words [forge of new any false deed.] And yet 26 H. 6. forger 3.  
 if A. make a feoffment by deed to B. of certain land, and after A. maketh a feoff- 27 H. 6. 3.  
 ment by deed to C. of the same land with an antedate before the feoffment to B.  
 this was adjudged to be a forgery within that Statute, and by like reason within  
 this statute also: and the rather in respect of the words subsequent, [or make, &c.]

¶ Or make, &c. ] These be larger words then to forge: for one may  
 make a false writing within this Act, though it be not forged in the name of ano-  
 ther, nor his seal nor hand counterfeited. As if A. make a true deed of feoff-  
 ment under his hand and seal of the Mannor of Dale unto B. and B. or some  
 other rase out D. the first letter of Dale, and put in S. and then where the true  
 Deed was of the Mannor of Dale, now it is falsly altered and made the Man-  
 nor of Sale. This is a false writing under seal within the purview of this sta-  
 tute. And so it is if a Rent Charge of one hundred pounds by the year be gran-  
 ted out of land in fee or for life, &c. and the grantee or any other rase out of one,  
 and instead thereof writeth two; this is a false writing within the danger of  
 this Statute.

¶ Or subtilly cause, or wittingly assent. ] To cause, is to procure  
 or counsel one to forge, &c. To Assent, is to give his assent or agreement after-  
 wards to the procurement or counsel of another; To consent, is to agree at the  
 time of the procurement or counsel, and he in Law is a procurer.

¶ Deed, Charter, or Writing sealed. ] It is required that the Deed,  
 Charter, or Writing, must be sealed; that is, have some impression upon  
 the wax, for Sigillum est cera impressa, quia cera sine impressione non est sigillum;  
 and no Deed, Charter, or Writing, can have the force of a Deed without a  
 Seal.

¶ Writing sealed. ] These are large words: for the making of a false  
 customary of a Mannor in writing under seal, containing divers false customs  
 tending to the diherison of the Lord of the Mannor, and that the same had been  
 allowed

Pasch. 15 Eliz.  
 Dier 322. James  
 Taverners case;  
 In Camera flet-  
 lata.



allowed and permitted by the Lords of the Mannor, &c. which was also false, was resolved to be within these words, [a false writing sealed.]

¶ Court Roll, or the will of any person or persons in writing. ] Here be two kinds of Muniments that need not be sealed, because they may take effect without any seal, for that they be no deeds; as Court Rolls concerning grants, surrenders, admittances, &c. of Copy or Customary lands: and the last will in writing. If any person which writeth the will of a sick man inserteth a clause in his last will, concerning the devise of any lands or tenements, which he had in fee-simple, falsely without any warrant, or direction of the Devisor: albeit he did not forge, or falsly make the whole will, yet is he punishable by this Statute, as it hath been often holden in the Star-chamber against the opinion reported by my Lord Dier.

Dier 12 El. f. 282.  
Sir James Marvyns  
case.

¶ To the intent that the state of Freehold or Inheritance, of or in any lands, tenements, or hereditaments, freehold or copyhold, shall or may be molested, troubled, defeated, recovered, or charged. ] The great doubt upon this branch, and of the branch hereafter ensuing, was, for that it is not expressed by this Act, what estate, or interest should be mentioned to pass by the Deed, Charter, &c. whereby the estate of the freehold or inheritance should or might be molested, &c. or charged; whether if one did forge, &c. a deed, charter, &c. of an interest, or term of a hundred or a thousand years, &c. of lands, which are the freehold or inheritance of another; whereby the same shall or may be molested, &c. and the same question of a rent charge for years in the like case: and the doubt was the greater in respect of the clause hereafter ensuing, which is, To the intent that any person or persons shall or may have or claim any estate or interest for term of years, of, in, or to any manors, &c. And it was resolved, that a lease or charge for years of any lands bearing the freehold or inheritance of any person, was within this branch, for the clause is general, not mentioning any estate or interest, &c. whereby the molestation should grow; and it was requisite it should extend to Leases or Charges for years, for otherwise mens estates of freehold or inheritance, &c. might be of little or no value: and accordingly it was resolved, Pasch. 38 Eliz. in the Star-chamber between the Lady Gresham plaintiff, and Roger Booth Scrivener of London, Markham and others Defendants, for the forging of a grant of a Rent charge, by deed bearing date anno 21 Eliz. for ninety nine years to the said Markham out of all Sir Thomas Greshams lands of inheritance, and for publication thereof; and sentence given upon the said branch accordingly against Roger Booth for publication of the same.

Pasch. 38 Eliz. in  
Camera Stellata:  
the Lady Gre-  
shams case.

And the said branch after ensuing, is to be understood when the forgery, &c. is to the molestation of a Termor. As if A. be possessed of a lease of lands for years, and B. in his name doth forge an assignment to C. of his term, this is directly within the letter and meaning of this branch, and the rather in respect of those things that be joyned therewith under the same punishment.

¶ Or the right, title, or interest of any person or persons in or to the same. ] These words were added, for that the Statute of 1 H. 5. being to undo and trouble the possession and title (in the Conjunctive) of the said Kings liege people: doubt was made whether a forgery to bar one that had but a bare right or title, and no possession was within that Statute: and therefore this clause of 5 Eliz. added this clause in the Disjunctive, as here it appeareth. But now by a special branch of this Act the Statute of 1 H. 5. cap. 3. being doubtfully penned, is repealed by a clause in this Act, and greater punishment indicated by this Statute.

Vide 4 H. 6. 25.  
8 H. 6. 33.  
20 H. 6.  
33 H. 6. 23.  
15 E. 4. 24.  
Pl. com. 88.



¶ Or shall pronounce, publish, or shew forth in evidence any such false and forged deed, &c. as true, knowing the same to be forged. ] Here be two things to be explained : First, What it is to pronounce, or publish as true. Secondly, What knowledge is sufficient.

To pronounce or publish is, when one by words or writing pronounceth or publisheth the deed, &c. to any other as true.

¶ Knowing the same to be forged. ] This knowledge may come by two means, either of his own knowledge, or by the relation of another. As if A. telleth B. that such a deed is false and forged, and yet B. will after pronounce or publish this to be a true deed, and afterwards it falleth out by proof that the relation of A. was true, and the deed in truth was forged, B. is in the danger of this Statute : and so was it resolved in the above said case of the Lady Gresham, against Roger Booth, &c. ubi supra, and sentence given accordingly.

¶ And that the Defendant shall suffer upon the Pillory the corporal penance, &c. ] And there is a clause that the Plaintiff should not release nor discontinue the punishment, &c. but only costs and damages : and yet it was resolved that the Queen might pardon the corporal punishment, which trencheth to common example.

Dier 15 Eliz.  
Taverners case,  
Ubi supra.

And upon the Statute of W.2. ca.25. which giveth two years imprisonment in a ravisment of ward, the King may pardon the said corporal punishment of imprisonment. And the punishment of finding of surety, and forjuring the Realm, &c. upon the Statute of W.2. c.28. De malefactoribus in parcis, may be pardoned by the King.

Pasch. 34 E. 3.  
Coram Rege, Rot.  
30. Canc' the case  
of Goditha Wal-  
diss. Dier 7 El.  
231.

¶ Any false charter or deed. ] This must be intended to be sealed according to the former clause, though it be not here specified.

¶ To the intent that any person or persons shall or may have or claim any estate or interest for term of years. ] This branch hath been explained before in the former part of this Statute.

Pl. com. 80. b.

¶ Not being copyhod. ] This needeth no explication.

¶ Or annuity. ] This is evident.

¶ Any obligation, or bill obligatory. ] These must be intended to be sealed : If a man forge a Statute staple, or a Recognisance in the nature of a Statute staple, that is, acknowledge them, or either of them in the name of another ; these are obligations within this Act, for each of them hath the seal of the party. But otherwise it is of a Statute Merchant, or of a Recognisance, because they have not the seal of the Conusor.

F.N.B. 96. b. c. &  
10. a.

15 H.7.15. &c.

¶ Or writing. ] This extends to a testament in writing, whereby a term for years or goods and chattels be devised, and the former branch extendeth to a will in writing concerning freehold and inheritance.

Dier 13 El.302. b.

¶ Acquittance, release or discharge. ] Lodowick Grevil Esquire was bound by Recognisance of two hundred pound, to Rowland Hinde of the inner Temple, for payment of one hundred pound. Hinde wrote a letter to Grevil, and writ his name in the lowest part of the letter, (as many use when they write to men of great calling) Grevil caused the letter to be cut off, and a general release in few words to be written above Hindes name, and took off Hindes seal, and fixed it under the release : so there was Hindes hand and seal to this release

Mich. 13 & 14 El.  
in Camera Stellata  
inter Hinde &  
Grevil.



release. Hinde being not paid his hundred pound, brought a Scire fac' upon the recognisance, whereunto Grevil pleaded this release. Hinde pleaded non est factum, and tried his dæd, whereupon judgment was given against him, where- by Hinde was barred of his debt. For this forged release Grevil was sentenced in the Star-chamber upon this Statute.

¶ Shall pay to the party grieved, his double damages. ] Upon these words in the case aforesaid, betwæen Hinde and Grevil, the question was, whether Hinde should have double damages in respect of the penalty, viz. the two hundred pound, or of the hundred pound, the due debt appearing in the con- dition of the recognisance. And it was resolved, that damages should be asses- sed by the Court to double the penalty, for the penalty should be recovered, by Law if the forged release had not been: and this was reported by the Lord Dier, and imprinted, and since omitted out of the print.

¶ Being hereafter convicted or condemned of any of the offences aforesaid, shall, &c. oftsoons commit, &c. any of the said offences. ] Here be four kind of offences; the first concerning molestation, &c. of fræhold and inheritance. Secondly, The publication of the same knowing, &c. The third concerning a term for years, annuities, and demands personals. Fourth- ly, The publication thereof.

Pasch. 7. Ja. Inter  
Sir Will. Reade Pl.  
& Rogerum Booth  
& alios Def. in  
Camera Stellata.

Now the question upon this branch concerning felony, was, that whereas the said Roger Booth was convicted in the Star-chamber for the publishing of the forged grant by dæd of a rent charge of a hundred pound per annum, as is aforesaid; afterwards the said Roger and others were charged in the Star- chamber with the forging of a dæd of feoffment, in the name of Sir Thomas Grelham bearing date 20 Eliz. but forged long after: whether this second for- gery was felony, or no, within this branch: and the doubt did rise upon the said words [ oftsoons ] commit any of the said offences. And it was objected; that by reason of this word [ oftsoons ] iterum, the second offence must be of the same na- ture as the first offence was, as the first offence being for publication of a forged dæd, &c. the second offence must be for the publication of another forged dæd, &c. and upon that branch whereupon the first offence was grounded, or else it was said, it was not iterum, which word was in signification quasi iter unum, that is to say per idem iter, and it is so taken for the second time. Primo quidem decipi, incommodum est, iterum stultum, tertio turpe: which doubt was referred to the considerations of the two Chief Justices, and Chief Baron, who upon hearing of Council learned of both sides, and upon conference, and consideration had of this Act, resolved, that the second offence was felony within the words, and meaning of this Act, for the words be expressly, being condemned of any of the said offences, oftsoons commit any of the said offences: so as by reason of these words, any of the said offences, this word [ oftsoons ] is well satisfied; if he com- mit the second time any of them: and so these words any of the said offences ex- tend to any of the said four offences before mentioned. And it was also resolved by them, that by reason of this word [ oftsoons ] the second forgery, &c. must be committed after the first conviction, or else it is no felony.

Cicero Lib. 1. de  
Tusculan.

¶ Provided always, &c. that if any person, &c. hath of his own head, &c. forged or made, &c. Or if any person, &c. hath heretofore published or shewed forth any false deed, &c. ] Hanford before this Statute forged a lease for years of the land of the Lord Williams of Tame, which lease after by Weynman (which had married one of the daugh- ters and heirs of the said Lord Williams) was impeached, but not as forged, and by composition for two hundred pound was redeemed by Weynman and the lease was cancelled. And after Weynman perceiving the lease to be forged, sued Hanford in the Chancery to have restitution of the two hundred pound, and

Trin. 11 El. Dier  
is a manuscript  
not printed.



and there Hanford after this Statute of 5 Eliz. maintained the lease as good and true : whereupon Weynman sued Hanford in the Star-chamber : where by the opinion of the Chief Justices it was holden, that it was not within this Statute, because that the deed was cancelled, and Hanford made no title to the interest of the term.

¶ Provided always, &c. That this Act, or any thing therein contained, shall not extend to any person that shall plead or shew forth any Deed or Writing exemplified under the Great Seal of *England*, or under the Seal of any other authentick Court of this Realm, nor shall extend to any Judge or Justice, or other person that shall cause any Seal of any Court to be set to such Deed, Charter, or Writing enrolled, not knowing the same to be false or forged.

This must be intended of a Deed or Writing, which by Law may be exemplified : for the knowledge whereof we will report a resolution of the whole Court of the Common Pleas. The issue between the said parties to be tried at the Bar was, whether the last Abbot of Abbingdon, and all his Predecessors, &c. held certain lands in the Parish of Saint Ellens, &c. discharged of the payment of Tithes : and the Plaintiff offered to shew in evidence to prove the said land to be discharged of payment of Tithes, a Vidimus or Innotescimus under the Great Seal in these words : Vidimus quendam antiquum librum in pergamenio intitulatum Volumen de copiis munimentorum seu diversorum gestorum, & actorum monasterii de Abbingdon. In which book was a copy of a Bull of the Pope, for the discharge of the said land for payment of Tithes, which was but part (amongst other things) of the said book. And by the opinion of the whole Court, hearing of the counsel of both parties, it was resolved that the said exemplification ought not to be given in evidence to the Jury for these causes : First, Because that which was exemplified, was not of record ; for neither Deed, Charter, or other Writing, either sealed, or without seal, ought to be exemplified under the Great Seal, or any other Seal in Court of Record ; for seals of Courts of Record ought not to exemplifie any thing but that which is of Record, because Records be publick, whereunto every subject may have recourse to confer the exemplification with the Record it self, and Records be in the custody of sworn Officers, and therefore no inconvenience can follow upon the exemplification of them. But a Deed, Charter, and other Writings are private, and remain in the custody of the party, and may be rased, interlined, or corrupted in points material, and if they should be exemplified, the rasure, interlineation, and corruption shall not appear therein. Also the Deed, Charter, or other writing may be forged ; and if they should be exemplified, then the exemplification might ever be shewed in evidence, and not the Deed, &c. it self, and so the forgery, and falsity should never upon the view of the Deed, or of the seal, or other things rising upon the view, be discovered. Moreover if a forged Deed should be exemplified, then the effect of this Statute concerning publication, should be taken away ; for then the forged Deed, &c. it self might never be published, or given in evidence, but the exemplification, and so this Statute in that point deluded ; and therefore where this Statute or any other Statute or book speaks of an Exemplification, Vidimus or Innotescimus of a Deed, &c. it must be intended of a Deed inrolled, viz. the Exemplification, Vidimus or Innotescimus of the inrolment thereof, which is of Record. It was further resolved that no Record, or inrolment of any Record, may be exemplified under the Great Seal, but of a Record of the Court of Chancery, or other Record duly removed thither by Certiorari, &c. Furthermore it was resolved that no exemplification ought to be of any part of a Letters Patents, or of any other Record, or of the inrolment thereof, but the whole Record of the inrolment thereof ought to be exemplified, so that the whole truth may appear, and not of such part, as makes for the one party,

Mich. 10 Jacobi  
Regis in communi  
banco in a prohibi-  
tion between  
Tho. Read. Pl. and  
Avis Hide, and  
Rich. Hide Defen-  
dants.

Mich. 29 & 30  
Eliz. lib. 5. fo. 54.  
in Pages case.



28 H. 8. c. 16. 1 &  
2 Ph. & Mar. c. 8.  
1 Eliz. cap. 1.

and nothing that makes against him, or that manifesteth the truth. Lastly, In the case at the Bar, the said Book was intituled, Volumen de copiis munimentorum, & diversorum gestorum. So as seeing the Full it self (being no matter of Record) could not be exemplified; à fortiori, no exemplification could be had of the copy of the same. And if Fulls, &c. might be exemplified, then there might be an evasion to make the Statute of 28 H. 8. c. 16. of small force, which prohibiteth pleading, or alledging of Fulls, &c. under pain of a Premunire, as by that Act appeareth.

## C A P. LXXVI.

### Of Libels and Libellers.

**W**Hat a Libel is, how many kinds of Libels there be, who are to be punished for the same, and in what manner, you may read in my Reports, viz. Lib. 5. fo. 124, 125. Lib. 9. fo. 59. To these you may add two notable Records. By the one it appeareth, that Adam de Ravensworth was indicted in the Kings Bench for the making of a Libel in writing, in the French tongue, against Richard of Snowhall, calling him therein, Roy de Ravensers, &c. Whereupon he being arraigned, pleaded thereunto not guilty, and was found guilty, as by the Records appeareth. So as a Libeller, or a publisher of a Libel committeth a publick offence, and may be indicted therefore at the Common Law.

Mic. 18 E. 3. coram  
Reg. Rot. 151.  
Libellum.

John de Northampton an Attorney of the Kings Bench, wrote a Letter to John Ferrers one of the Kings Council, that neither Sir William Scot Chief Justice, nor his fellows the Kings Justices, nor their Clerks, any great thing would do by the commandment of our Lord the King, nor of Queen Philip, in that place, more then of any other of the Realm; which said John being called, confessed the said Letter by him to be written with his own proper hand. Judicium Curie. Et quia prædictus Johannes cognovit dictam literam per se scriptam Roberto de Ferrers, qui est de concilio Regis, quæ litera continet in se nullam veritatem: prætextu cujus Dominus Rex erga Curiam & Justiciarios suos hic in casu habere posset indignationem, quod esset in scandalum Justitiæ & Curie. Ideo dictus Johannes committitur Marefcus & postea invenit 6 manucaptors pro bono gestu.

## CAP. LXXVII.

## Of Champerty, Imbracery, Maintenance, &amp;c.

**S**EE the First part of the Instit. Sect. 701. Verb. Maintenance. And the second part of the Institutes, W.1.cap.8.32. & W.2.cap.49. and the exposition upon the same. See also the Statute of 32 H.8.cap.9. in the first part of the Institutes, *ubi supra*. Rot.Parl.17 R.2. nu.10. John de Windfors case. And the fourth part of the Institutes, cap. Chancery. Whereunto you may add, that where by the Statute of 6 H.6.cap.2. it is recited, that divers in times past have been disinherited, because that in special Assises the Tenant and Defendant might not have knowledge nor copy of the pannel of them that be impannelled to pass in the said Assises, to inform them of their right and title before the day of the Session that the Assises shall be demanded: which is a rehearsal of the Common Law, but so to be understood, that both parties plaintiff and tenant, &c. be present, when such information is given, and consenting thereunto: otherwise, if one of them informeth in the absence of another, it is unlawful, and a good cause of challenge of such of the Jury as shall be so on the one part informed: for every Jury must be indifferent, as he stands unsworn.

## CAP. LXXVIII.

## Of Barretry.

**S**EE the First part of the Institutes, Sect. 701. Verb. Barretors. See the Stat. Vet. Mag. Cart. tute of Ragman temps E. 1. whereby the Commission of Trailebaton is cap.28. 2 part. raised. It is thus provided. Et pur ceo q̄ en tiels maners de queeles doit le court le Roy estre favourable, voet le Roy, & enjoint les Justices q̄ nul enquerelant, ne respoignant ne soit surpris nenchefon per Hockettours, ou Barrettours pour que le veritie ne soit ensue.

Hockettors or Hockquetours is an ancient French word for a Knight of the Post, (worthy to be knit to a post) a decayed man, a basket-carrier.

For Barrettors, see the First part of the Institutes, *ubi supra*.



## CAP. LXXIX.

Of Riots, Routs, Unlawful Assemblies,  
Forces; &c.

**R**iotum cometh of the French word, Riote. i. Rixari: and in the Common Law signifieth, when thre or more do any unlawful act, as to beat any man, or to hunt in his Park, Chase, or Warren, or to enter or take possession of another mans Land, or to cut or destroy his Corn, Grasse, or other profit, &c.

\* Latine Turba.  
Comes est discordia vulgi;  
Namq; a turbando  
nomen sibi turba  
recepit.  
Lamb. int. Leg.  
In ca. 13, 14, 15.  
Vide Alvered.  
cap. 26.  
\* Turma quasi  
tordena.

\* Routa is derived of the French word Rout, and properly in Law signifieth, when thre or more do any unlawful act for their own, or the common quarrel, &c. As when Commoners break down Hedges, or Pales, or cast down Ditches, or Inhabitants for a way claimed by them, or the like.

An unlawful assembly is when thre or more assemble themselves together to commit a Riot or Rout, and do it not. Prædones autem nominamus usq; numerum septem virorum; deinde (quousq; numerus 35 coaluerit) \* Turmam (Saxonice *bloth*) dicimus; numerus si excreverit, exercitum vocamus, *blothbota*, to be quit of unlawful assemblies.

One may commit a Force. But of this, that I may not unprofitably repeat, you may read at large Fitzherbert, and those others that have written of this Argument.

Interest regi habere subditos pacatos. Vis legibus est inimica. *Sæ* Lib. 5. fo. 91. & 115. Lib. 11. fo. 82. *Sæ* the First part of the Institutes, Sect. 431. 440. Custom. de Norm. cap. 52. fo. 66, 67.

Regula.

## CAP. LXXX.

Of Quarrelling, Chiding, or Brawling by words  
in Church or Church-yard.

5 E. 6. cap. 4.

**T**he offender being a Lay-man, is to be suspended by the Ordinary ab ingressu Ecclesiæ. and being a Clerk, from the ministration of his Office, so long as the Ordinary thinks meet according to the fault.

C A P.

*CAP. LXXXI.*

Of Smiting, or laying violent hands upon another  
in Church or Church-yard.

**T**he offender shall be deemed ipso facto excommunicate, and excluded from  
the company of Christs congregation.

5 E. 6. ubi supra.  
V. Lib. 6. fo. 29. b.  
Greens case. sim.

*CAP. LXXXII.*

Of malicious striking with any weapon, or drawing  
of any weapon in Church or Church-yard, to the  
intent to strike another, &c.

**T**he offender being convict by the oath of twelve men, or by his own con-  
fession, \* or by two lawful witnesses, before Justices of Assize, Justices  
of Oier and Terminer, or Justices of Peace in their Sessions, shall lose one  
of his ears : and if he hath no ears, to be marked in the cheek with a hot  
Iron with the Letter F. and ipso facto be excommunicate.

5 E. 6. ubi sup.  
\* Note the dis-  
junctive.  
Int. leg. Inæ. ca. 6.  
Qui in templo  
pognaverit 120.  
solidis noxiam  
facito.  
Dier 23 Eliz. 177.  
Case ultim.

*CAP. LXXXIII.*

For striking, &c. in any of the Kings Courts of  
Justice : and for striking, &c. in any of the  
Kings Houses, &c.

**S**EE before in the Sixty fifth Chapter of Mispriſion, that is, Crimen  
comissionis.



## CAP. LXXXIV.

Against Fugitives, or such as depart out of the Realm without licence, and such as are beyond Sea, and return not upon command.

Ovidius.

*Omne solum forti patria est, ut piscibus aquor,  
Et volucris, vacuo quicquid in orbe pater.*

12 R.2.ca.15:

25 H.8. cap.19.

1 Eliz.c.1. revive.

1 Jac.cap.4.

3 Jac.cap.5.

**I**T is first to be seen of Acts in Parliament published in print, which of them are abrogated and repealed, and which of them stand in force. The Statute of 5 R.2. cap.2. is repealed by the Statute of 4 Jac. cap.1. and the Statutes of 13 Eliz. cap.3. & 14 Eliz. cap.6. are expired. The Statute of 12 R.2. Such as pass the Sea, or send out of the Realm to provide or purchase any benefice of holy Church, with cure or without cure, are in danger of a Premunire. No person residing within any of the Kings Dominions, shall depart out of any of those Dominions, to any Visitation, Congregation, or Assembly for Religion.

Anno 1 Jac. cap. 4. and 3 Jac. cap.5. Against going or sending of children to any Seminary beyond Sea, and against the departure out of the Realm (without license) of any children not being Souldiers, Mariners, Merchants, or other Apprentices, or Factors, for any cause whatsoever. And anno 3 Ja. ca.4. against imposing Felony upon any Subject that shall depart this Realm, to serve any Prince, State or Potentate: or shall pass over the Seas, and there shall voluntarily serve any such forrain Prince, State, or Potentate; not having before his or their going or passing, taken the Oath mentioned in that Act. And likewise imposing Felony upon any Gentleman or person of higher degree, or any person which hath born, or shall bear any office, or place of Captain, Lieutenant, or any other place, charge, or office in Camp, Army, or Company of Souldiers, or Conductor of Souldiers, that shall go or pass voluntarily out of this Realm, to serve any such forrain Prince, State, or Potentate, or shall voluntarily serve any such forrain Prince, State, or Potentate, before he be bound by Obligation with two sureties, as in that Act is prescribed. But it is provided that upon the attainder of any such Felony, no forfeiture of dower or corruption of blood shall ensue. Read over these Statutes, for they are so plainly penned, as they need no exposition.

Pert unto this, two things fall into consideration. First, what Acts of Parliament not published in print in our Books of Statutes do prohibit men to pass the Seas without licence. And secondly, what may be done therein by the Common Law of England.

At the Parliament holden at Clarendon, Anno 10 H. 2. called the Assise of Clarendon, facta est recognitio cujusdam partis consuetudinum & libertatum antecessorum Regis, & ca.4. sic recognitum est. Archiepiscopis, Episcopis, & personis regni non licet exire regnum absque licentia Domini Regis, & si exierint, si Regi placuerit, securum eum facient, quod nec in eundo nec in redeundo, nec moram faciendo perquirent malum seu damnum Domino Regi vel regno.

This appeareth in it self to be but a recognition, or declaration of the Common Law: and this is manifestly proved by the Writ in the Register at the Common Law, pursuing in effect the very words of the said Act of 10 H.2. Breve de securitate invenienda, quod se non divertat ad partes externas sine licentia Regis.

Regist.fo.89.90.  
F.N.B. 85.

And

And hereupon there ariseth a diversity between one of the Clergy, and one of the Laity: for a man of the Church may be compelled to put in surety, that he shall not depart the Realm without the Kings license, nor shall there attempt any thing in contempt or prejudice of the King or of his people. And this Writ is directed to the Sheriff, and saith, Quia datum est nobis intelligi, quod A. B. Clericus versus partes exteras ad quam plura nobis & quam pluribus de populo nostro præjudicialia & damnosa ibid. prosequend', &c. Whereby it appeareth, that this Writ lieth only in the case of an Ecclesiastical person, or a man of the Church, and that for thre reasons. First, For that they had the cure of Souls, and therefore ought to be resident. Secondly, For that they, maintaining forrain authority, impugned many of the Kings Laws, to the great prejudice of the Laity. Thirdly, They had no temporal lands, therefore they found sureties.

There is another Writ in the a Register, and that is to be directed to the party himself, viz. either to the Clerk, or to the Layman, wherein the King reciting, Quod datum est nobis intelligi, quod tu vers. partes exteras absque licentia nostra clam destinas te divertere, & b quamplurima nobis coronæ nostræ præjudicialia ibid. prosequi intendas, &c. sub periculo quod incumbit prohibemus, ne vers. partes exteras absque licentia nostra speciali aqualiter te divertas, nec quicquam ibid. prosequi, &c. And upon this Writ the party is not to find any surety, for there is no word of surety in this Writ. And if the c subject cannot be found, the King may make a Proclamation under the Great Seal, to the effect of the Writ last mentioned.

Now let us peruse such authorities as we find in Records or Books of Law in serie temporis, taking some few examples for many that might be cited.

d Willelmus Marmion Clericus profectus est ad Regem Franciæ sine licentia Domini Regis, & propterea finem fecit, &c. Note the going over without any prohibition precedent unlawful.

e Nul grand Seignior ou Chivalier de nostre Realm ne doit prender chemin (daler hors de Realm) sans nostre conge, car issint purroit le Realm remain disgarne de fort gents. And f the Nobles and Piers of the Realm are of the Kings great Council.

By this it appeareth, that these are prohibited to go beyond Sea without licence: but others of the inferior Laity may go without licence, if they travel not to the abovesaid prohibited ends. But g those of the Laity and men of the Church also being beyond Sea, may be commanded by the Kings Writ, either under the Great Seal, or Privy Seal, in fide & ligeantia, &c. to return into the Kingdom (though he be not there to any of the abovesaid prohibited ends;) and if he return not, for his contempt his lands and goods shall be seised, quousque, &c. h Commandment was given to an Ecclesiastical person residing at Rome to return into England.

i Quamplurimæ literæ Domini Regis missæ Romæ, ad revocand' diversos Clericos ibid. commorantes, qui quamplurima attemptarunt in dedecus Regni, præcipi-ent etiam, quod redeant ad festum eis appunctuatum: & pro eo quod non venerunt, præceptum fuit vicecomiti quod eos capiat. Et Rogerus de Holme Præbendarius, in Ecclesia Sancti Pauli London captus per Vic' London, & arenatus, examinatus, & convictus mittitur prisonæ Turris London ibid. moraturus, &c.

k Rex proclamari fecit in omnibus comitatibus Angliæ, quod ne quis comes, baro, miles, religiosus, sagittarius, aut operarius, &c. extra regnum se transferat, sub poena arrestationis, & incarcerationis.

Herein it is to be observed, that seeing by Law, no Earl, Baron, or Knight, (as Britton saith) nor religious, &c. ought to go out of the Realm, a general Proclamation declarative will serve to aggravate their offence: but otherwise it is of those, that are not prohibited by Law, they must have such a particular Writ or Proclamation as is abovesaid.

l Sir Matthew Gourny Knight was prohibited by the Kings Writ to depart the Realm, and to serve in wars expressly inhibited by the King; which notwithstanding

Vide simile Regist. 61. &c. Ad jura Regia. Regist. fo. 193. De licentia transiretandi pro religiosis.

a Regist. 89.90. F. N. B. fo.85.

b So as neither this Writ, nor a Proclamation in nature of this Writ ought to be granted, but where the party intends to depart the Realm for these ends.

c F.N.B. fo.85. b. Vide Dier 1 Eliz. 165. b.

d Rot. Finiū 6 H.3. Et Rot. Claus. 7 H.3 m.5.

e Britton temps E.1. fo. 282, 283. Vide le statut de 5 R.2 c.2. Seigniors except out of that Statute.

f See the first part of the Instit. Sect. 164. f. 110. a.

g An. 19 E. 2. in Scac. 2 & 3 Ph. & Mar. Dier 128. pl. 61. W. de Britain. Countree de Richmonds case.

h Rot. claus. 4 E.3 m. 38.

i Hil. 24 E.3. corā Rege, Rot. 13.

k Dorst. claus. 25 E.3. m.18.

l Mic. 39 E. 3. coram Rege Rot. 57. Somers. Rot. Vasc. 10 E. 3. m.29



\* By seizure and imprisonment.

*a* Rot. Pat. 40 E. pt. 1. n. 40. Mic. 41 E. 3. Coram Rege Rot. 24. Priorita Sancti Barth. & de Novo Castro quod mare non transibit, &c.

\* Nota ( legum suarum ) ut supra. *b* F.N.B. 85. f.

*c* Dier Hil. 2 Eliz. 176. the case of Barteu and the Dutcheys of Suffolk.

*d* See 10 H. 4. 5. Englefields case. Lib. 7. fo. 11. See the 1. part of the Institutes. §. 102. *e* Mich. 12 & 13 El. Dier f 296. & Pasc. 23 El. f. 375. 5.

Deut. c. 23. v. 15.

Camden El. p. 35.

An. 21 H. 7. Rot. Parl. 19 H. 7.

standing he did. Now the Record saith, Quia Mathæus Gourny miles contra defensionem Regis transfretavit, & se guerris sibi per regem inhibitis immiscuit, tam in corpore, quam in bonis \* forisfecit Regi manerium de Corimallet simul cum una Caruca terræ, &c.

*a* Rex licentiam dedit Abbati de E. quod proficisci possit ultra mare ad visitandum caput Sancti Johannis Baptistæ Ambiani, corporatium regum Colonia, fere-trum Sancti Francisci in & Sanctum Jacobum in-Galicia, ita quod non prosequetur, aut procurabit quicquam in præjudicium Regis, aut \* legum suarum, sicut idem Abbas in præsentia Cancellarii Regis per juramentum promissit.

Note that Ecclesiastical persons could not go beyond Sea on Pilgrimage without licence, nor do any thing in prejudice of the King, or his Laws.

*b* And it is to be observed that the King may grant licence to travel beyond the Seas, either under the Great Seal, Privy Seal, or Privy Signet, but he cannot recal one that is beyond Sea, but by the Great Seal, or Privy Seal.

But for avoiding of tediousness, and heaping many to one end, let us descend to later times.

*c* The Letters under the Great Seal, or Privy Seal to recal any from beyond Sea, ought to be served by some *d* Messenger, who upon his oath is to make a certificate thereof in the Chancery, and from thence a Mittimus to be sent into the Exchequer, and thereupon a Commission to be granted to seize the lands and goods of the Delinquent.

*e* Mich. 12 & 13 Eliz. It was resolved by all the Justices ( except two ) that a Merchant of London departing the Realm, to the intent to live freely from the penalty of the Law, and out of his due obedience to the Queen, and not for any Merchandise, that it was no contempt to the Queen, for Merchants were excepted out of the said Statute of 5 R. 2. c. 2. and by the Common Law Merchants might pass the Sea without licence, though it were not to merchandize.

It is holden, and so it hath been resolved, that divided Kingdoms under several Kings in League one with another are sanctuaries for servants or subjects flying for safety from one Kingdom to another, and upon demand made by them, are not by the Laws and liberties of Kingdoms to be delivered: and this (some hold) is grounded upon the Law in Deuteronomy. Non trades servum domino suo, qui ad te confugerit.

When Queen Elizabeths Ambassadors lier in France, anno 34. of her reign, demanded of the French King Morgan and others of her subjects, that had committed treason against her, the answer of the French King to the Queens Ambassadors is truly related in these words. Si quid in Gallia machinarentur, Regem ex jure in illos animadversurum; sin in Anglia quid machinati fuerint, Regem non posse de eisdem cognoscere, & ex jure agere. Omnia Regna profugis esse libera, Regum interesse, ut sui quisque Regni libertates tueatur. Immo Elizabetham non ita pridem in suum regnum Mountgomerium, principem Condæum, & alios è gente Gallica admisisse, &c. and so it rested.

H. 8. in the 28. year of his Reign being in league with the French King, and in enmity with the Pope, who was in league with the French King, sent Cardinal Pool Ambassador to the French King, of whom King H. 8. demanded the said Cardinal being his subject, and attainted of treason, and to that end caused a Treatise to be made ( which I have seen ) that so it ought to be done jure gentium; sed non prævaluit. But Ferdinando King of Spain upon request made by H. 7. to have Edmund de la Pool Earl of Suffolk attainted of High Treason by Parliament, anno 19 H. 7. at the first intending to observe the privilege and liberty of Kings, to protect such as came to him for succor, and protection, delivered him not, yet in the end upon the earnest request of H. 7. and promise that he would not put him to death, caused the said Earl to be delivered unto him, who kept him in prison, and construing his promise to be personal to himself, commanded his son Henry after his decease to execute him, who in the fifth year of his Reign upon cold blood performed the same.

We could add more examples of this kind, but (to speak once for all) having purposed



purposed to give some taste of every thing pertinent, or incident to such things, as we have undertaken to treat of, these shall suffice.

See the Statute of 3 Car. an Act to restrain the passing and sending of any to be Popishly used beyond the Seas.

\* *Flemensfreme*, sive *Flemensfrenthe*, interpretatur, *Catalla fugitivorum*.

3 Car. cap. 2:  
\* Mich. 10 H. 4.  
Coram Rege, Rot.  
59. Hertford.

## C A P. LXXXV.

## Against Monopolists, Propounders, and Projectors.

**I**T appeareth <sup>a</sup> by the Preamble of this Act (as a judgment in Parliament) that all Grants of Monopolies are against the ancient and Fundamental Laws of this Kingdom, and therefore it is necessary to define what a Monopoly is.

<sup>b</sup> A Monopoly is an Institution, or allowance by the King by his Grant, Commission, or otherwise to any person or persons, bodies politicke, or corporate, of or for the sole buying, selling, making, working, or using of any thing, whereby any person or persons, bodies politicke, or corporate, are sought to be restrained of any freedom, or liberty that they had before, or hindered in their lawful trade.

<sup>c</sup> For the word Monopoly, dicitur, ἀπό τῶν μόνων, i. solo, καὶ πωλέομαι, i. vendere, quod est, cum unus solus aliquod genus mercaturæ universum vendit, ut solus vendat, pretium ad suum libitum statuens: hereof you may read more at large in that case. And the Law of the Realm in this point is grounded upon the Law of God, which saith, Non accipies loco pignoris inferiorem & superiorem molam, quia animam suam apposuit tibi. Thou shalt not take the nether or upper millstone to pledge, for he taketh a mans life to pledge: Whereby it appeareth that a mans trade is accounted his life, because it maintaineth his life; and therefore the Monopolist that taketh away a mans trade, taketh away his life, and therefore is so much the more odious, because he is vir sanguinis. Against these Inventors and Propounders of evil things, the Holy Ghost hath spoken, Inventores malorum, &c. digni sunt morte.

That Monopolies are against the ancient and Fundamental Laws of the Realm (as it is declared by this Act) and that the Monopolist was in times past, and is much more now punishable, for obtaining and procuring of them we will demonstrate it by reason, and prove it by authority.

Whatsoever offence is contrary to the ancient and fundamental Laws of the Realm, is punishable by Law: but the use of a Monopoly is contrary to the ancient and fundamental Laws of the Realm: therefore the use of a Monopoly is punishable by Law.

That offence which is contrary to the ancient and fundamental Laws is malum in se. The Minor is proved by this declaration in Parliament.

The liberty that the Subject hath to go to any Clerk in the Kings Court cannot be restrained but by Parliament.

In 50 E.3. John Peachie of London was severely punished for procuring a licence under the Great Seal, that he only might sell sweet wines in London.

See in the Preambles of 9 E.3. cap.1. 25 E.3. cap.2. 27 E.3. & 28 E.3. Stat. Stap. 2 R.2. c.1. See the Statute of Magna Cart. c.3. 31 E.3. cap.10. 7 H.4. c.9. and 12 H.7. c.6. 1 & 2 Ph. & Mar. c.14. Rot. Parl. 1 R.2. nu.20. 4 R.2. nu.39. 5 R.2. nu.89. Fortescue cap. 35, 36. One of the Articles wherewith William de la Pool Duke of Suffolk was charged, was for procuring of divers liberties in derogation of the Comon Law, and hindrance of Justice: Note this is an offence punishable.

<sup>a</sup> The Statute of  
21 Jac. cap. 3.  
Rom. 1.30. Inventores malorum.

<sup>b</sup> A Monopoly described. See the Exposition upon Magna Carta c. 29 & 30 in the 2. pt. of the Instit.

<sup>c</sup> Trin. 44 El. Lib. 11. f.84, 85. le case de Monopolies. Deut. cap. 14. v.6.

Rom. 1.30.

Commercium jure gentium commune esse debet, & non in Monopolium, & privatum pauculorum questum convertendum. Iniquum est alios permittere, alios inhibere mercaturam.

11 H.7.11.

W.1. cap.27.

Rot. Par. 50 E.3. nu. 33.

Rot. Parl. 28 H.5. nu. 30.



Mich. 2 & 3 El.  
Dier Manuscript  
not printed.

Stat. de 5 Eliz.

King Philip and Queen Mary by their Letters Patents granted to the Mayor, Bailiffs and Burgeses of Southampton and their successors, (for that King Philip first landed there) that no Wines called Palmies, brought into this Realm from the parts beyond the Seas by any Liege man or Alien, should be discharged or landed in any other place of the Realm, but only at the said Town and Port of Southampton, with a prohibition, that no person or persons shall do otherwise upon pain to pay treble custom: And it was resolved by all the Judges of England that this grant made in restraint of the landing of the same Wines was against the Laws and Statutes of this Realm, viz. Magna Carta, 29, 30. 9 E. 3. cap. 1. 14 E. 3. 25 E. 3. cap. 2. 27 & 28 E. 3. Statute of the Staple. 2 R. 2. cap. 1. and others: and also that the assentment of treble custom was against Law, and thereby void. And after at the Parliament holden in Anno 5 Eliz. the Patent, as to Aliens, was by a private Act confirmed by Parliament, and not for English.

Trin. 41 Eliz. Coram Rege, Rot. 92. Int. Davenant & Hurdys in trespass. Trin. 44 Eliz. in Lib. 11. fo. 84, 85. &c. Edward Darcies case. Hil. 7. Jacobi in Lib. 8. fo. 121, 122. &c. the case of the City of London.

The judgment in the said case of Monopolies cited before, Trin. 44 Eliz. was the principal motive of the publishing of the Kings Book mentioned in the Preamble of this Act, and that Book was a great motive of obtaining the royal assent to this Act of Parliament, whereof we are now to speak. This Act moved from the House of Commons: the Act is long and in Print, and need not here to be rehearsed: yet will we peruse and explain the words in the several branches of the Act.

¶ By his Grant, Commission, or otherwise. ] These words [or otherwise] are of a large extent, and are well warranted by this Act, the words whereof extend not only to all Proclamations, Inhibitions, Restraints and Warrants of assistance of the King, but all Inhibitions, Restraints, and Warrants of assistance of all or any of the Privy Council or any other: and all other matters or things whatsoever, either of the King, or of all or any of his Privy Council, to the instituting, erecting, strengthening, furthering, or countenancing of the sole buying, selling, &c. or any of them, are declared to be altogether contrary to the Laws of this Realm, &c. ut in Statuto. This Act herein, and in the residue thereof, is forcibly and vehemently penned for the suppression of all Monopolies: for Monopolies in times past were ever without Law, but never without Friends.

¶ Sole. ] This word [sole] is to be applied to five several things, viz. buying, selling, making, working and using; four of which are special, and the last, viz. (sole using) is so general, as no Monopoly can be raised, but shall be within the reach of this Statute, and yet for more surety these words [or of any other Monopolies] are added; and by reason of these words [sole using] divers provisions are made by this Act, as hereafter shall appear.

¶ Of any thing. ] As the words before were general, so these words [of any thing] are of a large extent. Res enim generalem habet significationem, quia tam corporea, quam incorporea, cujuscunque sunt generis, naturæ, five speciei, comprehendit: and this word causeth some exceptions hereafter to be made, whereof we shall speak in their proper place.

¶ Whereby any person or persons, &c. ] For this see the Statute of Magna Carta, ubi supra: and this clause is impliedly warranted by these words [or of any other Monopolies] in the first clause of the Preamble.

¶ Shall be for ever hereafter examined, heard, tried, and determined by and according to the Common Laws of this Realm, and not otherwise. ] This Act having declared against all Monopolies, &c.

to be void by the Common Law, hath provided by this clause, that they shall be examined, heard, tried and determined in the Courts of the Common Law according to the Common Law, and not at the Council Table, Star-chamber, Chancery, Exchequer chamber, or any other Court of like nature, but only according to the Common Law of this Realm, with words negative, and not otherwise: For such boldness the Monopolists took, that often at the Council Table, Star-chamber, Chancery, and Exchequer Chamber, Petitions, Informations, and Bills were preferred in the Star-chamber, &c. pretending a contempt for not obeying the commandments and clauses of the said grants of Monopolies and of Proclamations, &c. concerning the same: for the preventing of which mischief this branch was added.

¶ That all person and persons, bodies politique and corporate whatsoever, which now are, or hereafter shall be, shall stand, and be disabled, and incapable, &c. ] This branch for further extirpation of all Monopolies, disableth all men, &c. to have, that is, to take any Monopoly, or to use, exercise, or put in ure any Monopoly, &c. whereby the wish and desire of the Poet is granted.

Funditus extirpa Monopolas & Nomopolas;  
Hic labor, hoc opus est; Hercule major eris.  
Paucorum nocuit scelerata licentia multis,  
Argento mutat dum Monopola piper.

¶ If any person or persons after the end of forty days next after the end of this present Session of Parliament shall be hindred, grieved, disturbed, or disquieted, &c. ]

By this branch Six things are provided and enacted. 1. Remedy is given to the party grieved at the Common Law by action or actions to be grounded upon this Statute. 2. This remedy may be had in the Court of the Kings Bench, Common Pleas, and Exchequer, or any of them, at the election of the party grieved. 3. The party grieved shall recover treble damages, and double costs. 4. No essoin, protection, wager of Law, aid, prayer, privilege, insurrection, or order of restraint to be allowed in any such action. By [aid prayer] is intended as well the Writ de domino rege inconsulto, as the usual form of aid prayer, for both are to one end, and [order of restraint] was added, for the Council Table, Star-chamber, Chancery, Exchequer Chamber, and the like.

¶ 5. If any person or persons shall after notice given, &c. cause or procure any such action to be stayed or delayed before judgment, by colour or means of any order, warrant, power or authority, save only of the Court wherein such action shall be brought and depending, the person or persons so offending shall incur the danger of Premunire, &c.

This clause extends to the Privy Council, Star-chamber, Chancery, Exchequer Chamber, and the like, and likewise to those that shall procure any warrant, &c. from the King, &c. and so it was resolved by a Committee of both Houses before this bill passed; but it extendeth not to the Judges of the Court before whom any such action shall be brought, for before judgments, days must be given by orders of Court, &c.

¶ 6. Or after judgment had upon such action shall cause or procure execution of or upon any such judgment, to be stayed by colour or means of any order, warrant, power or authority, save only by Writ of Error and Attaint, the person or persons so offending shall incur the danger of Premunire, &c.

This clause is more general then the former, being the fifth clause, for this extendeth also to the Judges of the Court where the Action is brought or depending, if any stay or delay be used by them after judgment, and so it was resolved as is aforesaid.



Concerning new  
manufactures and  
heretofore gran-  
ted, &c.

Pasch. 15 Eliz. in  
the Exchequer  
Chamber, Bircots  
case.

Rot. Parl. 21 E. 4.  
nu. 29.  
22 E. 4. ca. 5.  
7 E. 6. ca. 6.  
1 Jacobi ca. 5.

Concerning new  
manufactures  
hereafter to be  
granted, &c.

There be in this Act concerning Monopolies or sole buying, &c. many Provisions. The first is, That this Act shall not extend to any Letters Patents or grants of privilege heretofore made of the sole working or making of any manner of new manufacture: but that new manufacture must have seven properties. First, it must be for twenty one years or under. Secondly, it must be granted to the first and true inventor. Thirdly, it must be of such manufactures, which any other at the making of such Letters Patents did not use: for albeit it were newly invented, yet if any other did use it at the making of the Letters Patents, or grant of the privilege, it is declared and enacted to be void by this Act. Fourthly, the privilege must not be contrary to Law: such a privilege, as is consonant to Law, must be substantially and essentially newly invented; but if the substance was in use before, and a new addition thereunto, though that addition make the former more profitable, yet it is not a new manufacture in Law: and so was it resolved in the Exchequer Chamber, Pasch. 15 Eliz. in Bircots case for a privilege concerning the preparing and melting, &c. of lead ore: for there it was said, that that was to put but a new button to an old coat: and it is much easier to add then to invent. And there it was also resolved, that if the new manufacture be substantially invented according to Law, yet no old manufacture in use before can be prohibited. Fifthly, nor mischievous to the State by raising of prices of commodities at home. In every such new manufacture that deserves a privilege, there must be Urgens necessitas, and evidens utilitas. Sixthly, nor to the hurt of trade. This is very material and evident. Seventhly, nor generally inconvenient. There was a new invention found out heretofore, that Bonnets and Caps might be thickened in a Fulling mill, by which means more might be thickened and fulled in one day then by the labours of Fourscore men, who got their livings by it. It was ordained that Bonnets and Caps should be thickened and fulled by the strength of men, and not in a Fulling mill, for it was holden inconvenient to turn so many labouring men to idleness. If any of these seven qualities fail, the privilege is declared and enacted to be void by this Act: and yet this Act, if they have all these properties, let them in no better case then they were before this Act.

The second Provision concerneth the privilege of new manufactures hereafter to be granted: and this also must have seven properties: first, it must be for the term of fourteen years or under: the other six properties must be such as are aforesaid, and yet this Act maketh them no better then they should have been if this Act had never been made, but only except and exempt them out of the Purview, and penalty of this Law.

The cause wherefore the privileges of new manufactures either before this Act granted, or which after this Act should be granted, having these seven properties, were not declared to be good, was, for that the reason wherefore such a privilege is good in Law is, because the inventor bringeth to and for the Commonwealth a new manufacture by his invention, cost and charges, and therefore it is reason that he should have a privilege for his reward (and the encouragement of others in the like) for a convenient time: but it was thought that the times limited by this Act were too long for the private, before the Commonwealth should be partaker thereof, and such as serve privileged persons by the space of seven years in making or working of the new manufacture (which is the time limited by law of Apprenticeship) must be Apprentices or Servants still during the residue of the privilege, by means whereof such numbers of men would not apply themselves thereunto, as should be requisite for the Commonwealth, after the privilege ended. And this was the true cause wherefore both for the time passed, and for the time to come, they were left of such force, as they were before the making of this Act.

The third proviso is, That this Act shall not extend or be prejudicial to any grant or privilege, power or authority heretofore made, granted, allowed, or confirmed by any Act of Parliament now in force, so long as the same shall so continue in force. This was added for that the City of London, and other Cities and Boroughs,



roughs, &c. have some priviledges for buying, selling, &c. by Acts of Parliament. For example, The stat. of 1 & 2 Ph. & Mar. giveth a Priviledge to Cities, Burroughs, Towns corporate, and Market Towns, for the sale by retail of certain Wares and Merchandizes, and some other Acts of Parliament in like case: all which do prove, that such priviledges could not be granted by Letters Patents. But specially this clause was added in respect of the generality of these words [sole using.]

The fourth Proviso. Provided also, and it is hereby further intended, declared and enacted, that this Act, &c. shall not in any wise extend, or be prejudicial unto the City of London, &c.

By this Proviso, not only the Grants, Charters, and Letters Patents to any City or Town Corporate, &c. but also the customs used within the same, are excepted out of this Act: which seemeth to me more then need, because the first clause of the Purview of this Act doth extend but to Commissions, Grants, Licences, Charters, and Letters Patents.

The fifth Proviso doth except out of the Purview and penalty of this Statute four things, but leaveth them of the like force and effect, and no other, as this Act had never been made. First, the priviledge concerning printing made, or hereafter to be made. Secondly, Commissions, Grants, and Letters Patents made or hereafter to be made for or concerning the digging, making, or compounding of Saltpeter or Gunpowder. Thirdly, or the casting or making of Ordnance, or shot for Ordnance. Fourthly, Grants and Letters Patents heretofore made, or hereafter to be made of any Office or Offices heretofore erected, made, or ordained, and now in being, and put in execution, (other then such Offices as have been decreed by any his Majesties Proclamations.) So as to the thing by this Branch excepted, Four things are required. First, that it be an Office. This extendeth only to lawful Offices for divers causes. 1. It was necessary to except lawful Offices in respect of these words [sole using.] 2. Offices are duties, so called, to put the Officer in mind of his duty. 3. That which is void and against Law, is no duty, unless it be not to use them. 4. Such as are erected against Law, are Monopolies and Oppressions of the people, and no Offices. 5. In Acts of Parliament lawful Offices are intended, as in like cases hath been often adjudged: therefore unlawful Offices are all taken away by this Act, and lawful Offices remain and continue.

Secondly, that it be an Office heretofore erected. By this Act the erection of all new Offices, which were not erected before this Act, are wholly taken away.

Thirdly, that it be now in being, and put in execution. Though the Office were erected before this Act, yet if it were not in being and put in execution the 19 day of February in the 21 year of the Reign of King James (at what time this Parliament begun) it is clearly taken away by this Act.

Fourthly, that it be such an Office as hath not been decreed (for so is the Record of Parliament, and not [decreed] as it is in the printed book) by any of his Majesties Proclamations: for all such Offices as be decreed, that is, either forbidden, or prohibited by any of his Majesties Proclamations, or where the party grieved is left to his remedy at the Common Law by any Proclamation, they be also decreed; for being contrary to the Laws of this Realm, as it is declared and enacted by this Act, they are also decreed with a witness, and can never be granted hereafter.

The fifth Proviso concerning the making of Allom, or Allom-Pines, needed not, for they belong to the Subject in whose ground soever they are: and therefore any priviledge thereof cannot be granted, but in the Kings own ground.

The sixth Proviso concerns the Hostmen of New-Castle, &c. This clause was inserted in respect of these words [sole using.]

The rest of the Provisoes concern particular persons, and do exempt and except certain supposed priviledges out of the Purview and penalty of this Law, but leaveth them of like force and effect, as they were before the making of it.

But it is to be observed, that all the Provisoes after the Sixth, extend only to the supposed priviledges therein particularly mentioned, already granted, and not to any to be granted hereafter.

1 & 2 Ph. & Mar.  
cap. 7.

Lit. Sect. 731.  
Pl. com. 246. b.  
11 H. 4 80.  
4 E. 4 31. pl. 2.

See the Proclamation bearing date 10 July, An. 19 Ja. Regis, and another Proclamation bearing date, 20 Martii An. 19 Ja. Regis.



## CAP. LXXXVI.

Against those that obtain power to dispence with  
penal Laws, and the forfeitures thereof.

The Statute of  
21 Jac.cap.3.

In Exilio Hu-  
gonis.

Rot. Parliam.  
50 E.3.nu.17.  
& 28.  
See 28 H 6.nu.30.  
30. before.  
The Purview of  
the Act of 21 Ja.  
ca.3.  
The offence de-  
scribed.

**I**T appeareth by the Preamble of this Act, that all Grants of the benefit of any penal Law, or of power to dispence with the Law, or to compound for the forfeiture, are contrary to the ancient fundamental Laws of this Realm.

It was one of the Articles wherefore the Spencers in the Reign of King E.2. were sentenced, that they procured the King to make many Dispensations. Per lour malveis counsell defeasant ceo que le Roy ad grant per Parliamnt per bone advice.

In 50 E.3. Richard Lions a Merchant of London, and the Lo. Latimer, were severally sentenced in Parliament for procuring of Licences and Dispensations to transport Wols, &c.

**I**T is declared and enacted, that all Commissions, Grants, Licences, Charters, and Letters Patents, heretofore made or granted, to any person or persons, bodies politick or corporate, of any power, liberty, or faculty, to dispence with any others, or to give licence or toleration to do, use, or exercise any thing against the tenure or purport of any Law or Statute, or to give, or make any warrant for any such dispensation, licence or toleration to be had, or made, or to agree, or compound with any others for any penalty or forfeitures limited by any Statute, or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any Statute before Judgment thereupon had, and all Proclamations, Inhibitions, Restraints, Warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering or countenancing of the same or any of them, are altogether contrary to the Laws of this Realm, in no wise to be put in execution.

And shall be for ever hereafter examined, heard, tried and determined by and according to the Common Laws of this Realm; and not otherwise, &c.

Provided also, that this Act shall not extend to any Warrant or Privy Seal made or directed, or to be made or directed by his Majesty, his Heirs or Successors to the Justices of the Courts of Kings Bench, Common Pleas, Barons of the Exchequer, &c. and other Justices for the time being, having power to hear and determine, &c. to compound, &c.

This Act moved from the House of Commons. Now let us peruse, first, the words of the Purview of this Act, and secondly, of this Proviso.

In and by the Purview Five things are declared and enacted to be void, and contrary to the ancient fundamental Laws of this Realm. First, all Commissions, Licences, Charters, and Letters Patents of any power, liberty or faculty, or to give licence or toleration to do, use, or exercise any thing against any Law or Statute. The reason hereof is notably expressed by the resolution of all the Judges of England, in the case of penal Statutes, whereunto we refer you.

Hil. 2 Jac.lib.7.  
ca. 26.b.the case of  
nal Statutes.

¶ 2 Or to give or make any warrant for any such dispensation, licence, or toleration. ] For this branch also, see the said case of penal Statutes, ut supra.

¶ 3 Or to agree or compound with any others for any penalty or forfeitures limited by any Statute. ] By this branch, all Commissions to agree or compound with any others for any penalty or forfeiture limited by any Statute, are declared to be void, and against the ancient fundamental Laws of the Realm. The great inconvenience hereof appeared in the proceedings of Empson and Dudley, in the Reign of King H.7. who had the Office of Pastors of the forfeitures: and by colour of their Commission and Office, did most intolerably and unlawfully oppress, burden, and depauperate the Subjects. Let them which follow their steps be afraid of their fearful end: Qui eorum vestigia sequuntur, eorum exitus perhorrescant. The like oppression was used by certain Commissioners for compositions to be made for offences committed against penal Statutes, in the Reign of Queen Mary. This Branch hath stricken at the root, and prevented this mischief for ever hereafter.

¶ 4 Or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any Statute before judgment thereupon had. ] This branch declareth not only the grant to be void, and against the Laws of this Realm, for the which, see the resolution of all the Judges in the said case of penal Statutes, ubi supra,) but the promise thereof also. And the reason that the Judges yield there, is notable, in these words, For that in our experience it maketh the more violent and undue proceeding against the Subject, to the scandal of Justice, and offence of many. So as the grant or promise of any forfeiture before judgment, is both against Law, and inconvenient. And if it be so in case of a forfeiture or penalty; much more in case of life and death, for the forfeiture, &c. of any man to be begged, before he be duly and lawfully attainted. For, as the Judges say, there is the more violent and undue proceeding against the Subject to the scandal of justice, and the offence of many: and therefore such beggars are offenders, worthy of severe punishment.

Against these hunters for blood the Prophet speaketh thus, Perit sanctus de terra, & rectus in hominibus non est, omnes in sanguine insidiantur, vir fratrem suum ad mortem venatur. There is not a godly man upon earth, there is not one righteous amongst men, they all lie in wait for blood, and every man hunteth his brother to death. Micah 7.2.

¶ 5 And all Proclamations, Inhibitions, Restraints, Warrants of assistance, and all other matters or things any way tending to the instituting, erecting, strengthening, &c. ] This is the like clause, and is so to be expounded, as before hath been in the Chapter of Monopolies.

Concerning the said Proviso, the Judges before whom the cause dependeth, and that have power to hear and determine the same, who are presumed to be indifferent between the King and the Subject, may by warrant or Privy Seal, &c. compound, &c. for the King only, after plea pleaded by the defendant.

There is another Proviso concerning Letters Patents, or Commissions for licensing or keeping of any Tavern, or selling, &c. of Wines, &c. or for the making of any compositions for such licenses, so as the benefit of such compositions be reserved, and applied to or for the use of his Majesty, his Heirs or Successors, and not for the private use of any other person or persons.

The report of the said case of penal Statutes was a principal motive of the Kings Book, mentioned in the preamble of this Act: And that Book amongst other just and weighty causes moved the King to give his Royal assent to this Act of Parliament, &c. whereof we have spoken.



## CAP. LXXXVII.

Against Concealors (*turbidum hominum genus*)  
and all pretences of Concealments whatsoever.Stat. de An. 21 Jac.  
cap. 2.

**T**hat the Kings Majesty, his Heirs, or Successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons, bodies politick, or corporate, &c.

The Act is long, and need not here be rehearsed. Yet will we peruse and explain the severall branches and parts of the Act.

Before the making of this Statute, in respect of that ancient prerogative of the Crown, that *nullum tempus occurrit Regi*, the titles of the King were not restrained to any limitation of time, for that no Statute of limitation that ever was made, did ever limit the title of the King to any Mannors, Lands, Tenements or Hereditaments, to any certain time. And where many Records and other Muniments, making good the estate and interest of the Subject, either by abuse or negligence of Officers by devouring time were not to be found; by means whereof, certain indigne and indigent persons pying into many ancient titles of the Crown, and into some of later times concerning the possessions of divers and sundry Bishopricks, Dean and Chapters, and the late Monasteries, Chaunteries, &c. of persons attainted, and the like, have passed surreptitiously in Letters Patents, oftentimes under obscure and general words, the Mannors, Lands, Tenements, and Hereditaments of long time enjoyed by the Subjects of this Realm, as well Ecclesiastical as Temporal: Now to limit the Crown to some certain time, to the end, that all the Subjects of this Realm, their Heirs and Successors, may quietly have, hold, and enjoy, all and singular Mannors, Lands, Tenements, and Hereditaments, which they, their ancestors, or predecessors, or any other, by, from, or under whom they claim, have of long time enjoyed; this Act was made and moved from the House of Commons, the body whereof consisteth of three parts. First, That part which above is in pare rehearsed, consisteth on Three Branches.

The first part.

*First*, That the King, his Heirs or Successors, shall not at any time hereafter, sue, impeach, question, or implead any person or persons bodies politick or corporate, for, or in any wise concerning any Mannors, &c. *Secondly*, Or for, or concerning the revenues, issues, or profits thereof. *Thirdly*, Or make any title, claim, challenge, or demand, &c.

This part is exclusive and negative: and herein 6 things are to be observed.

1. This clause extendeth to all manner of suits, &c. either in Law, or in Equity.
2. To all manner of Courts whatsoever.
3. It extendeth not only to all manner of suits, but to all impeachments, questionings, impleadings, making of title, claims, challenges or demands.
4. Under these words [right and title] not only bare rights and titles are comprehended, but real estates also.
5. Not only suits, &c. for or concerning any Mannors, &c. but for or concerning the revenues, issues, or profits, &c. and this extendeth to the ancient demesns of the Crown, which are mentioned to be restrained by an Act of 11 H. 4. 6. So as all Writs of Scire fac' or other Proces upon any Record; all informations of intrusion, or charging any man as Bailiff: all finding of Offices, either of inticling the King, or of information, are restrained, not only within these words [impeach or question] but also within these words [or make any title, claim, challenge, or demand] which are large and beneficial words, and all other suits, &c. of what

Stat. Par. 11 H. 4.  
cap. 23. not im-  
printed.

what kind or nature soever. But this Negative clause must have Four incidents. 1. The Kings right and title must accrew unto him above threescore years past before the 19 day of February, in the 21 year of King James, which was the day of the beginning of this Parliament. The reason hereof was, that if any title of escheat, forfeiture, &c. accrewed within threescore years, then it should be out of this Act: for generally the time of limitation to bar the King was threescore years, but such right or title must now be in esse. 2. Unless the King or his progenitors, &c. or any, under whom he or they claim, have been answered by force and virtue of any such right or title to the same, the rents, revenues, issues or profits thereof within threescore years, &c. In this branch these words [ by force and virtue of any such right or title ] were materially added, for otherwise if the King had been answered the rents, revenues, &c. by reason or pretext of Wardship, primer seison, extent, or the like, it might have made a doubt whether such an answering of the revenues, &c. had been within this Act; which doubt is cleared, that it must be by force or virtue of any such right or title, whereby the King impeacheth the state of the subject. 3. Or that the same have been duly in charge to his Majesty, or to the late Queen Elizabeth within the space of threescore years. Duly in charge in judgment of Law, is the roll of the pipe: for although a note before the Auditor or any other may be a mean to bring it in question, and to be put in charge, yet that is not in judgment of Law said to be duly in charge, unless it be in charge in the pipe. 4. Or have stood in super of record within the said space of threescore years. It cannot stand in super, unless the thing in question were before duly in charge.

But there is a good Proviso added towards the end of this Act, viz. that no putting in charge, or super, or answering of the farm rents, revenues, or profits, &c. in four cases shall be within this Act, viz. By force, colour or pretext of any Letters Patents of concealments: They were called Letters Patents of concealments, because either they had a clause before the habendum: *quæ quidem maneria nuper fuerunt à nobis concealata, subtracta, vel injuste detenta*, or to the like effect; or else a Proviso after the habendum to the like effect. Letters Patents of concealment were granted in Queen Maries time; and the first that I find, were granted to Sir George Howard: and in all succeeding Acts of Parliament of confirmation of Letters Patents, Letters Patents of concealment are excepted.

2. Or defective title. By Letters Patents passed by the warrant of certain Commissioners under the Great Seal for compositions of defective titles, pretending the same to be for the Kings benefit, and safety of the subject, in which Letters Patents no words of concealment, &c. are mentioned, but yet upon the matter, they were supposed to be concealed, &c. from the Crown.

3. Or of lands, tenements or hereditaments out of charge. This was a new device to have a certificate, that they were not in charge, and then to take a grant from the King, for a very small composition, &c. And these were but inventions and subtil devices to deceive the King, to rob him of his tenures, and to the infinite vexation and trouble of the subject, all which mischiefs are now remedied by this Act.

4. Or by force, colour or pretext of any Commission or other authority to find out concealments, defective titles, or land, &c. out of charge. This was a necessary clause to be added, for of this kind there were infinite numbers.

Out of this first part all liberties and franchises be excepted.

¶ And that every person and persons, bodies politick and corporate, their heirs and successors, and all claiming from, by, or under them, or any of them, for and according to their several estates and interests, which they have, or claim to have in the same respectively, shall hereafter quietly and freely have, hold and injoy against his Majesty, his heirs and successors, &c.

The second part.

This



This is the second part of the body of the Act, and as the first part is Negative and exclusive of the right and title of the King, so this part is Affirmative, and establishing the state of the subject.

The mischief before this Statute was in two sorts, viz. either when the King had any estate vested, or continued in him: or where the King had but a bare right. For example, the Kings tenant seised of lands, &c. in fee is attainted of felony, and dieth, the King hath a real estate in him: but if before the felony the Kings tenant were disseised, and after is attainted, and dieth, now hath the King but a bare right. In both these cases, & sic in similibus, the subject is provided for by this Act, both by the first part, and by this also: for where in this part it is said, according to their and every of their several estates and interests which they have or claim: If they have an estate, and the King but a bare right or title, then are they within these words [which they have]; and if the King hath a real estate in him, then are they within these words [or claim]: so as the remedy is applied to both the mischiefs. Again, the words in this part are further, have held, or enjoyed. That is, where the subject hath an estate, and the King but a bare right or title.

[Or taken the rents, issues, revenues, or profits thereof.] These words extend to all cases where the real estate is in the King: Whereby is understood the actual taking of the rents, issues, revenues, or profits by one that claims an interest in the land: for albeit the King may in Law charge him as Bailif, yet without question, de facto, he did take the rents, issues, revenues and profits, and that sufficeth to answer the letter and meaning of this Act.

Moreover, the words of this part are, [against him, his heirs or successors.] So admit in the case put before, the Kings tenant being disseised, as is aforesaid, before his attainder of felony, that that disseisor had been disseised, or had mortgaged the land before this Statute, this Act in this case barreth the King of his right and title, and to that end worketh upon the state of the disseisor or Mortgagee; but yet the first Disseisor or the Mortgagee for the condition performed or broken may re-enter; for the words of this part be [against the King, his heirs and successors] so as the bar is only against them: and every subject shall take benefit of this Act, for the Kings right and title is thereby utterly barred: and there is a saving hereafter in this Act to all persons, &c. other then the King, &c. all such right, &c. as they ought to have had before this Act.

This part extendeth not to liberties and franchises.

Now followeth the third part of the Purview of this Act.

The third part.

And furthermore that every person or persons, bodies politick and corporate, their heirs and successors, &c. shall quietly and freely have, hold, and enjoy all such Mannors, &c. as they now have, claim, and enjoy, &c. against all and every person and persons, their heirs and assigns having, claiming, or pretending to have any estate, right, title, interest, claim or demand whatsoever, &c. by reason, or colour of any Letters Patents, or grants upon suggestion of Concealment, or wrongful detaining, or not being in charge, or defective titles, or by, from, or under any Patentees, &c. of or for which Mannors, &c. no verdict, &c.

This part secures the subject against the subject, viz. against Patentees and Grantees of concealments, defective titles, or lands not in charge, and all claiming under them. A beneficial Law both for the Church and Commonwealth, in respect of the multitude of Letters Patents and Grants of these natures and qualities, and many of them of large extents, and in general words, and had passed through the hands of many indigent and needy persons, &c.

This part extendeth to Liberties and Franchises, which the Former two parts did not.

The

The two first Provisoes are plain, and in effect are included in the body of the Act. The second Proviso was necessary to preserve tenures: the saving needeth no explanation. The third Proviso is particular and evident. The fourth Proviso, Provided also, and be it enacted, that where any fee farm rent, &c. This was added for the preserving of the Kings fee farms and rents out of such Mannors, &c. which are established and made sure by this Act. For example: King E. 6. did grant the Mannor of D. which came to him by the Statute of Chanceries to J.S. and his heirs, reserving a fee farm, or any other rent, which grant for some imperfection was insufficient in Law to pass the said Mannor, and yet is established and made sure by this Act. This Proviso maketh good the fee farm or rent to the King, if he hath been answered the same by the greater part of sixty years last past.

The last Proviso is particular and evident,

Of the benefit of this Act, the poor do participate as well as the rich, for hereby (amongst other things) above an hundred Lay Hospitals having had Priests within them in those days to pray and sing for Souls, &c. (if need were) are established against all verations and pretences of concealments.

See an excellent Act made against these Harpyes or Helluones, that under obscure words endeavoured surreptitiously, in a Patent of concealment, to have swallowed up the greatest part of the possessions of that ancient and famous Bishoprick of Norwich, which by the industry and prosecution of the then Attorney general was overthrown, and yet for more surety in a matter of so great weight preferred a Bill in Parliament for establishing of the Bishoprick, which in the end passed as a Law, anno 39 El. ubi supra.

See 39 El.ca.22. which is worthy to be read. See this case at large in the 4. part of the Institutes, cap. Consistory Courts, &c.

Tristius haud illis monstrum, nec saevior ulla  
Pestis & ira Dei stygiis sese extulit undis:  
Virginei volucrum vultus, foeditissima ventris  
Proluvies, uncaeque manus, & pallida semper  
Ora fame.

## C A P. LXXXVIII.

### Against Vexatious Relators, Informers, and Promooters upon penal Statutes.

**T**Hat all offences hereafter to be committed against any Penal Statute, for which any common Informer or Promooter may lawfully ground any popular action, bill, plaint, suit or information, &c. shall be commenced, sued, prosecuted, &c. before the Justices of Assize, Justices of Nisi prius, &c. in the Counties where the offences were committed, and not elsewhere.

Whereas a good and profitable Law was made in the 18 year of Queen Eliz. for the ease and quiet of the Subject, and for the regulating of Informers upon penal Statutes, inflicting corporal punishments in certain cases upon them: And whereas two other good Laws were made for the same ends, the one in the 28 year, and the other in the 31 year of the said late Queens Reign, which yet stand and remain in force: yet these Acts did not meet with all the mischiefs and grievances offered to the Subject by the Relators, Informers, and Promooters, (turbidum hominum genus) but these four mischiefs and grievances remained still.

Statutum de 21 Jac.Reg.c 4.

18 El. ca. 3.

28 El. ca. 5.

31 El.ca. 10.



First, many penal Laws obsolete, and in time grown apparently impossible, or inconvenient to be performed, remained as snares, whereupon the Relator, Informer or Promoter, did vex and intangle the Subject; Such as were the Statutes made anno 37 E. 3. cap. 3. concerning the prices of Poultry, and 34 E. 3. cap. 20. concerning Transportation of Corn, 3 E. 4. cap. 2. concerning Corn not to be brought into the Realm, and 4 H. 7. cap. 9. concerning the prices of Hats and Caps, and 14 R. 2. cap. 7. concerning the paking of Tyn out of the Realm, and 15 R. 2. cap. 8. Concerning the carriage of Tyn to Calice, and 4 H. 5. cap. 3. concerning making Pattens of Asp, and 4 H. 7. cap. 8. concerning the prices of Broadcloth, &c. and 11 H. 7. cap. 2. concerning Vagabonds, unlawful Games, and Alehouses, &c. and one other Statute in the 19 year of H. 7. cap. 12. concerning those matters, and 11 H. 6. cap. 12. concerning Marchant-dlers, and the price of Candles, and 34 H. 8. cap. 7. concerning the sale of Wines, and 28 H. 8. cap. 14. concerning the prices Wines, and 27 H. 8. Stat. de Monasteriis, concerning keeping of house and households upon scites of Monasteries, &c. and 4 H. 7. cap. 19. concerning houses of Husbandry and Tillage, and 7 H. 8. cap. 1. concerning letting down of Towns, and 27 H. 8. cap. 22. concerning decay of Houses and Inclosures, and 5 E. 6. ca. 5. for the maintenance of Tillage, &c. and 5 Eliz. ca. 2. for maintenance and increase of Tillage, and 14 R. 2. ca. 4. 8 H. 6. ca. 23. and 5 E. 6. cap. 7. concerning the buying of Wool, Wollen yarn, &c. and 33 H. 8. ca. 5. concerning the keeping of great Horses, the Statute of Winchester in the time of E. 1. concerning Harness and Arms, Artic. super Cart. c. 20. concerning making of Rings, Crosses, and Locks, and 37 E. 3. cap. 7. that makers of white vessel should not guild, and 2 H. 5. ca. 4. Stat. 2. that Goldsmiths should not take more then forty six shillings eight pence for a pound of Trep silver guilt, and 2 H. 6. ca. 14. that no silver shall be bought for more then thirty shillings the pound of Troy, and 2 H. 4. ca. 6. against the bringing in of Coin of Flanders, Scotland, and other Forrain Coin, and 13 R. 2. ca. 8. and 4 H. 4. ca. 25. concerning the prices of Hay and Dars sold by Vostlers, and 4 & 5 Ph. & Mar. cap. 5. concerning the putting to sale of coloured Cloth: and another part of the same Statute concerning the mystery of making, weaving, or rowing of Wollen cloth, &c. and 18 El. ca. 16. for toleration of certain Clothiers to dwell out of Towns corporate: and many other unnecessary Statutes unfit for this time, about the number of threescore, are repealed by an Act made at this Parliament in the 21 year of the Reign of King James, as by that Act appeareth: and many like Acts are not continued, as by the conference between that Act and other former Acts of continuance may appear: So as these snares that might have lien heavy upon the Subject, by this and other former Statutes, either are repealed or not continued.

13 E. 1. Stat. de  
Winton.

The second mischief was, that common Informers, and many times the Kings Attorney drew all Informations for any offence, in any place within the Realm of England against any penal Law, to some of the Kings Courts at Westminster, to the intolerable charge, veration, and trouble of the Subject; and it was feared that Westminster Hall would labour of an Apoplexy by drawing up all Suits unto it, as the natural body doth tabescore, when the humours of the body are drawn up unto the head, which in the end (if it be not prevented) turneth to an Apoplexy.

The third mischief was, that in Informations, &c. the offence supposed to be against the penal Law, and to be committed in one County, was at the pleasure of the Informer &c. alledged in any County where he would, where neither party nor witness was known, against the right institution of the Law, that the Jury (for their better notice) should come de vicineto of the place where the fact was committed.

The fourth mischief was, that in divers cases the party Defendant in Informations or Actions upon the Statute, were driven to plead specially, which was both chargeable and dangerous to him, if his plea were not both substantial and formal also.

These three mischiefs last mentioned are expressly and absolutely provided for by



by this Act, which moved from the house of Commons. And so did the Act of 21 Jac. cap.28. continuing and reviving of divers Statutes, and repeal of divers others.

The first part of the Purview beginning thus. For remedy whereof be it enacted by the Authority of this present Parliament, that all offences, &c. The first part of the Act.

This clause consisteth upon three parts. First, affirmative: and this is divided into two branches. 1. For the Informations, &c. It is enacted, that where a common Informer might before this Act have informed upon any penal Statute, before Justices of Assise, Justices of Nisi prius, or Justices of Gaol-delivery, Justices of Oier and Terminer, or Justices of Peace in their general or quarter Sessions; there a common Informer may inform, &c. 2. Before what Judges; this Act appoints no new Judges, but such as former penal Laws appointed, viz. the Justices before mentioned, or any of them according to the former Act.

The second part is restrictive, restraining any Information, &c. to be commenced, sued, &c. either by the Attorney General, or by any Officer, common Informer, or any other person whatsoever, in any of the Kings Courts at Westminster. So as the Kings Bench, Star-chamber, Chancery, Common-Pleas, Exchequer or Exchequer-Chamber, cannot receive or hold plea of any Information, &c. upon any penal Statute, either by the Kings Attorney, any common Informer, or any other person whatsoever: but the matter shall be heard and determined before such Justices as are aforesaid in the proper County where the offence was committed.

The third part giveth the like Proces upon every popular Action, Will, Plaint, Information, or Suit to be commenced, or prosecuted by force; of, or according to the purport of this Act, as in an Action of Trespass, Vi & armis, at the Common Law: but upon no other popular Action, Will, &c. which is not sued, &c. by force of this Act.

The second part of this Act doth meet with the second of the said three mischiefs, and standeth upon three branches. The second part of the Act.

First, that in all Informations, &c. exhibited, &c. either for the King or any other, &c. the offence shall be layed and alledged, &c. in the said County where such offence was in truth committed, and not elsewhere.

The second branch is, that if the defendant pleaderth the general issue, the plaintiff or informer upon evidence to the Jury must prove two things: First, the offence laid in the information, &c. Secondly, that the offence was committed in that County, otherwise the defendant shall be found not guilty.

The third branch is, that for more surety that the offence shall be alledged truly in the proper County where in truth it was committed, no information, &c. shall be received, filed, or entered of Record, until the Informer or Relator hath first taken a corporal oath before some of the Judges of that Court, which consisteth on two parts: First, that the offence or offences laid in such information, &c. were not committed in any other County, then where the same are alledged in the information, &c. Secondly, that he believeth in his conscience, that the offence was committed within a year before the Information or Suit. And this Oath is to be entered of Record. And all this is to be done before the Information be received, filed, or entered of Record.

The third part of this Act meeteth with the last mischief: for by this part the defendant may plead the general issue, and give any special matter in evidence to the Jury: which matter being pleaded, had been a good and sufficient matter in Law to have charged the defendant, &c. The third part of the Act.

This is a very beneficial clause, and clearerh many questions at the Common Law. And where it may be objected, that for want of sufficient Clerks, the proceeding according to this Statute will be erroneous, and to be reversed by Writ of Error, so as it will deter Informers to Inform, &c. and in effect, lay asleep all penal Laws. To this it may be answered: First, that it shall be the fault of the Informer himself; for if he inform before Justices of Assise or Nisi prius, they



they have sufficient Clerks. Secondly, I perswade my self, that the other Justices will in discharge of their conscience and duty, provide sufficient Clerks. And lastly, that few or no errors shall fall out in respect of the general pleading.

The last clause of this Act is this : Provided always, that this Act or any thing therein contained, shall not extend to any Information, &c.

By this clause this Act extends not to penal Statutes of these sorts : Concerning 1. Popish Reculants for not coming to Church. 2. Maintenance, Champerty, or buying of Titles. 3. The subsidy of Tonnage and Poundage, Wool, &c. 4. The defrauding the King of any Custom, Tonnage, Poundage, Subsidy, Impost, or Pilage. 5. Transportation of Gold, Silver, Powder, Shot, Munition of all sorts, Wool, Woolsels, or Leather, but that every of these offences may be layed or alledged to be in any County at the pleasure of any Informer. But yet the informer cannot inform, &c. for any of these offences in any of the Courts at Westminster, but before the Justices appointed by this Act : for this clause extendeth only for the laying or alledging of any of these offences in any County that he will.

Mich. 29 & 30 El.  
Coram Rege.

Inter Wileston & Clark Mayor of Nottingham, the case was this : Wileston being arrested in Nottingham by Precept in the nature of a Capias, he was imprisoned in the custody of the Mayor being keeper of the Gaol within the same Town, and before the return of the Precept Wileston offered to the Mayor sufficient surety to appear, &c. and he refused to accept the same : whereupon Wileston brought his Action by Bill upon the Statute of 23 H.6. cap.10. whereunto the defendant pleaded the general issue ; and it is found by verdict against the defendant. In arrest of Judgment, it was shewed, that by the said Statute of 18 El. cap.5. it is provided, that none shall be admitted or received to pursue against any person upon any penal Statute, but by way of information or original action, and not otherwise : in respect of the said negative words it was adjudged, that, for that the said Action was brought by Bill, and not by Information or Original, Quod querens nihil capiat per billam. See the rest of the Statute of 18 Eliz. concerning Informers.

18 Eliz. cap.5.  
Vil. li. 6. fo. 19. b.  
Gregories case.

You have heard of four viperous Vermin, which endeavoured to have eaten out the sides of the Church and Common-wealth : Thæ whereof, viz. the Popopolist, the Dispencer with publick and profitable penal Laws for a private, and the Concealers are blown up, and exterminated : and the fourth, viz. the Vexatious Informer well regulated and restrained, who under the reverend Mantle of Law and Justice instituted for protection of the innocent, and the good of the Common-wealth, did bet and depauperize the Subject, and commonly the poorer sort, for malice or private ends, and never for love of Justice. And these are worthily placed amongst the Pleas of the Crown, because it is for the honour and benefit of the Crown, when the Church and Common-wealth do flourish in peace and plenty : for the King can never be poor when his Subjects are rich.

Hil. 36 Eliz. Rot.  
135. Int. plac. Regis,  
coram Rege.  
Hamonds case.

George Hamond informed upon a penal Statute concerning shipping of Cloth in the name of another, Qui tam, &c. against Edw. Griffith defendant. Hamond the Informer dyed, and upon motion made by the Attorney General, it was the opinion of the whole Court, that he the Attorney General might proceed for the Queens Poity after the death of the Informer.

Trin. 31 Eliz. coram Rege.  
Strettons case.

Between Stretton, Qui tam, &c. and Taylor defendant, that after a popular Action commenced, although the Attorney General will enter an Ulterius non vult prosequi ; or if the defendant plead a special plea, although the use be, that the Attorney (to the end that there may be no juggling or Cobin between the Informer and the Defendant) reply only ; notwithstanding, if the Attorney General will not reply, the Informer may proceed, and prosecute for his part ; for the Informer by his suit commenced hath made of a popular Action his private, which the King cannot for the part of the Informer pardon or release. And notwithstanding in all these cases before any Action or Information commenced by the Informer, but the suit remaining popular, wherein the King only, and no

See hereafter cap.  
105. of Pardons.  
37 H.6. fo. 4.  
5 E.4.3.  
2 R.3. fo. 12.  
1 H.7.3.

Subject



Subject hath any interest, the King may pardon and release the same: for after that pardon, no Informer can inform tam pro Domino Rege, quam pro se ipso, according to the Statute, &c. and for himself only in a popular Action he cannot inform:

## CAP. LXXXIX.

## Of Forestalling, Ingrossing, &amp;c.

**F**oristel, Faristel, *b* Foristellum, & Foristellarius, derived of two Saxon words, viz. far or fare ( via or iter ) unde fare for a passage and farewell, to go or proceed well: we have turned far to for and stall, which we retain still, and signifieth interceptionem, or *c* impedimentum transitus, hinderance or interception. And the offender is called Foristellarius. See of this offender in the ancient Statute: *d* Nullus Foristellarius in villa patiatur morari, qui pauperum sit depressor manifeste, & totius Communitatis, & patriæ publicus inimicus, qui bladum, pisces, allec, vel res quasunque venales per terram, vel per aquam venientes, quandoque per terram, quandoque per aquam obviando præ cæteris festinat, lucrum sitiens vitiosum, pauperes opprimens, ditiores decipiens, qui sic minus iuste illo qui eos apportaverit multo magis vendere machinatur. Qui mercatores exterraneos venalibus venientibus circumvenit, offerens se venditioni rerum suarum, & suggerit, quod bona sua carius vendere poterunt, quam vendere proponebant, & sic arte, vel ingenio villam seducit & patriam. Primo convictus graviter amercietur, secundo subeat iudicium pilloriæ, tertio incarcerationetur, & redimatur, quarto abjuret villam. Et hoc iudicium fiet de Foristallariis universis, & similiter de his qui\* consilium aut auxilium eisdem præstiterint vel favorem, &c. And his description see in a latter Act. See before in the Chapter of Monopolists.

Ingrossator or Engrossator, of the English and French word, grosse, that is, great or whole, unde Merchant grossier, a Merchant that selleth by great or whole-sale. We remember not that we have read of this word [ingrosse] in any Act of Parliament, Book Case, or Record, but *c* rarely, before the said Act of 5 E.6. And there is an Ingrossier by the Common Laws, who is hereafter described. And there is an Ingrosser by Act of Parliament, and he is described by the Statute of 5 E.6. And by that Act a Regrator is also described, who is a kind of Ingrosser. Regrator is derived of the French word Regrement, for Buckstery. But in ancient time both the Ingrossor and Regrator were comprehended under Forestaller.

It was resolved by the Justices and Barons of the Exchequer upon conference betwixt them, that Salt is a victual, and the buying and selling thereof was within the Statute of 5 E.6. for it was not only of necessity of it self for the food and health of man, but it seasoneth and maketh wholsom Wex, Pork, &c. Butter, Cheese, &c. and other Viands. And Peryam Justice said, *b* Hill. 26 El. in Cui banco, that so it had been lately adjudged.

*i* Mich. 6 Jac. in Scaccario, in an information by Baron against Boy, upon the Statute of 5 E.6. cap.14. of Ingrossers for buying and selling of Apples: the defendant pleaded not guilty, and was found guilty. But the Barons gave judgment against the Informer, and caused an Entry to be made in the Margent of the Record, that the judgment was given upon matter apparent to them, that Apples were not within the said Act, for that the Act is to be intended of victual necessary for the food of man, the words of the Act being [Corn, Grain, Butter, Cheese, Fish, or other dead victual] which is as much as to say ( of other dead victual of like quality: id est, of like necessary and common use. ) And therefore

See the 1. part of the Instit. §. 240. Domestay.  
*a* Chent. Dover. ter.  
*b* Worcester. Scitropscir Civitas.  
*c* Fleta lib.1. c.42.  
*d* Forestal. & lib.4 cap.11. Britton fo. 33. a. 77. a.  
*d* Vi. Ver. M.C. part 2. 24. b. 34 E.1. de Pistor.  
Braciatoribus & aliis victuellariis, & de Forestallariis, hic infra.

\* 51 H.3. Rast. weights and measures. 4. 25 E.3. c.3. Stat.3. 27 E.3. c.11. Stat. flap. 28 E.3. c.13. 5 E.6. c.14. 5 El. c.12. 13 El. cap.25.  
*e* For the word [ingrossor.] see 27 E.3. c.5. Stat.1. 37 E.3. cap.5.  
*f* For this word [Regrator] see 51 H.3. weights and measures.  
4. Rastall 14 R. 2. c.4. 8 H.6. cap.5. Regrators or Choppers, and in some Countries called Jobbers.  
*g* M. 44 & 45 El. at Serjeants Inn in Fleetstreet.  
*b* Hill. 26 El. judgment cite p. Peryam Justice.  
*i* M.6 Jac. in Scac. Int. Baron & Boy.



therefore Apples being rather of pleasure then necessity, are not within the said Statute, no more then Plumbs, Cherries, or other fruit; and no information hath ever been exhibited for ingrossing of Apples, Plumbs, Cherries, or other fruit: but the Statute of 2 E. 6. c. 15. doth forbid conspiracy of Costermongers and Fruterers, and maketh such conspiracy unlawful. And the said judgment of the Barons was affirmed in a Writ of Error in the Exchequer Chamber.

P. 18 E. 2. Coram Rege Rot. 76. Southt.

Mic. 39 & 40 El. Resolution de rours les Justices. \* Dardanarius. An Ingrosser by the Common Law described.

Lucrum; acquirit cundo, Nivis ut exiguus crescit cundo globus.

3 E. 2. Action sur lestat. F. N. B. 250. l.

43 Ass. p. 38. Tit. Ass. 354.

Nota, the abatement by undue means of the Price of our native commodities, is punishable by fine and ransom. See 23 E. 3. cap. 6 13 R. 2. cap. 8. Inter leges Ethelstani. cap. 12.

Inter leges Will. Conquest. fo. 125.

Venditio Brasel non est venditio Victualium, nec debet puniri sicut venditio panis, vini & cervisie, & hujusmodi, contra formam Statuti. But the Act of 5 E. 6. hath made corn, grain, &c. to be victual within that Act. Vide Vet. N. B. 2. part 23. b. Stat. de Pistor, Braccator, & aliis victelariis, 34 E. 1.

It was upon conference and mature deliberation resolved by all the Justices, that any Merchant, Subject or Stranger, bringing victuals or merchandise into this Realm, may sell them in gross; but that vendee cannot sell them again in gross, for then he is an \* Ingrosser according to the nature of the word, for that he buy in gross, and sell in gross, and may be indicted thereof at the Common Law, as for an offence that is malum in se. 2. That no Merchant or any other may buy within the Realm, any victual or other merchandise in gross, and sell the same in gross again, for then he is an Ingrosser, and punishable, ut supra: For by this means the prices of victuals and other merchandise shall be inhaunced, to the grievance of the Subject; for the more hands they pass through, the dearer they grow, for every one thirsteth after gain, vitiosum sitiant lucrum. And if these things were lawful, a rich man might ingross into his hands all a commodity, and sell the same at what price he will. And every practise or device by act, conspiracy, words or news, to inhaunce the price of victuals or other merchandise, was punishable by Law; and they relied much upon the Statute aforesaid, Nullus forestallarius, &c. which see before in this Chapter: and that the name of an Ingrosser in the Reign of H. 3. and E. 1. was not known, but comprehended within this word [forestallarius] lucrum sitiens vitiosum; and ingrossing is a branch of forestalling. And for that forestallarius was pauperum depressor, & totius Communitatis & patrie publicus inimicus, he was punishable by the Common Law. They had also in consideration the Wok in 43 Ass. where it was presented, that a Lombard did procure to promote and inhaunce the price of merchandise, and shewed how: the Lombard demanded judgment of the presentment for two causes. 1. That it did not sound in forestalling. 2. That of his endeavour or attempt by words, no evil was put in ure, (that is) no price was inhaunced, & non allocatur, and thereupon he pleaded not guilty: whereby it appeareth, that the attempt by words to inhaunce the price of merchandise was punishable by Law, and did sound in forestallment: and it appeareth by the Wok that the punishment was by fine and ransom. And in that case Knivet reported, that certain people (and named their names) came to Coteshold in Herefordshire, and said in deceit of the people, that there were such wars beyond the Seas, as no Wool could pass or be carried beyond Sea, whereby the price of Wools was abated: and upon presentment hereof made, they appeared; and upon their confession they were put to fine and ransom. See the Statute of 25 H. 8. cap. 2. whereby the Lords of the Council, Justices, &c. or any seven of them, &c. have power to set prices on victuals, and the same to be proclaimed under the Great Seal.

For preventing of all ingrossing and forestalling, it was the ancient Law before the Conquest, Decrevimus porro, ne quis extra oppidum quicquam 20 Denariis carius aestimatum emat, verum intra portum presente oppidi protecto, aliove viro fideli, aut ipso denique preposito regio, in celebri plebis concursu, & hominum oculis quisque mercator.

Interdicimus etiam ut nulli pecudes emantur nisi infra Civitates, & hoc ante tres fideles testes, nec alia necessaria sine fideijussore & warranto, &c. Item nullum mercatum vel feria sit, nec fieri permittatur, nisi in civitatibus Regni nostri & in burgis, &c.

Commiſſio facta fuit Roberto Hadham ad vendend' blada & alia bona diverſarum Abbathiarum alienigenarum, qui venit & cognovit, quod vendidit blada Prioris de Tickford in garbis in duabus \* tallis exiſtent' pro 10 l. qua venditio facta fuit contra legem & conſuetudinem Regni Angliæ, vendend' in garbis, priuſquam triturat' fuerunt, quod fieri debuiffet per meſuram poſt eorum triturationem : Ideo committitur priſonæ, & adjudicatur, quod ab omni officio Domini Regis amoveatur, & quod ſinem faciat cum Domino Rege.

Obſerve well this judgment, that it is againſt the Common Law of England to ſell corn in ſheafs before it is thręſhed and meſured : and the reaſon thereof ſecmeth to be, for that by ſuch ſale the Market in effect is forfeitall'd.

Hil. 25 E. 3. coram Reg. Rot. 13. Back. Hadhams caſe.

\* Of the French word *Tiſe*, 3 to heap in Goves or ſheafs. See 5 E. 6. cap. 14. He is a: Ingroſſer that buyes ( either then by grant or leaſe of land or tithe ) any corn growing in the fields, &c.

## C A P. XC.

## Against Roberdſmen.

**I**T is an Engliſh Proverb; That, many men talk of Robin Hood, that never ſhot in his Bow : and becauſe the Statutes and Records hereafter mentioned cannot well be underſtood, unleſs it be known what this Robin Hood was that hath raiſed a name to theſe kind of men called Roberdſmen, his followers, we will deſcribe him.

This Robert Hood lived in the Reign of King R. 1. in the Borders of England and Scotland, in Woods and deſerts, by robbery, burning of Houſes, felony, waſte and ſpoil, and principally by and with Vagabonds, idle wanderers, night walkers, and draw-latches : ſo as this notable thief gave not only a name to theſe kind of men, but there is a Way, called Robin Hoods Way, in the River of in Yorkſhire. And albeit he lived in Yorkſhire, yet men of his quality took their denomination of him, and were called Roberdſmen throughout all England.

He was, ſaith Major Scotus, prædonum princeps, & prædoniſſimus.

Againſt theſe men was the Statute of Wincheſter made in 13 E. 1. for preventing of robbery, murders, burning of houſes, &c. Alſo the Statute of 5 E. 3. which reciting the Statute of Wincheſter, and that there had been divers manſlaughters, felonies, and robberies done in times paſt, by people that be called Roberdſmen, Maſters, and Drawlatches, and remedy provided by that Act for the arreſting of them.

13 E. 1. Stat. de Wincheſt. c. 1. 4. 5 H. 7. 6. 3. 5 E. 3. c. 14

At the Parliament holden 50 E. 3. it was petitioned to the King that Ribauds and ſturdy Beggers might be baniſhed out of every Town. The anſwer of the King in Parliament was touching Ribauds ; The Statute of Wincheſter and the declaration of the ſame with other \* Statutes of Roberdſmen, and for ſuch as make themſelves Gentlemen, and men of Armes, and Archers, if they cannot ſo prove their ſelves, let them be driven to their occupation or ſervice, or to the place from whence they came.

Rot. Parl. 50 E. 3. nu. 61.

\* E. 3. c. 14. 2 H. 5. c. 9. 2 H. 6. cap. 14. Vid. 39 El. cap. 4.

It is provided by the Statute of 7 R. 2. that the Statutes made in the time of King Edward, Grandfather of the King, of Roberdſmen, and Drawlatches, be firmly holden and kept, and further proviſion againſt Vagabonds wandring from place to place. See a Law made in the ſixth Parliament of Queen Mary, Anno Dom. 1555. in Scotland againſt Robert Hood, Little John, &c.

7 R. 2. cap. 5. Vid. 39 Eliz. c. 4.



## CAP. XCI.

## Of Bankrupts.

**V**ide in the fourth part of the Institutes, Cap. The Court of the Commissioners of Bankrupts.

## CAP. XCII.

## Of Recufants.

1 El.c.2. 23 El.c.1.  
28 El.c.6. 35 El.  
c.1.2. 3 Jac.c.4.  
7 Jac.c.6. L.10.54  
the Chancellor of  
Oxfords case. Lib.  
11. 56, 57. &c.  
Dr. Fosters case.  
Lib 5. fo.1. Caudries  
case.  
Dier 3 lfo.203.

**F**irst, the Acts of Parliament that are made against them are 1 Eliz. cap.2. 23 Eliz. cap.1. 28 Eliz. cap.6. 35 Eliz. cap.1. & 2. 3 Jac. cap.4. 7 Jac. cap.6. These Acts of Parliament are interpreted and expounded by divers judgments and resolutions heretofore given, Lib.10. fo.54. &c. Le case de Chancelour, &c. de Oxford, an exposition of the Statute of 3 Jac. c.4. Et Lib. 11. fo. 56,57. &c. Doctor Fosters case, an exposition of all the said Statutes. See Lib. 5. fo. 1. &c. Caudries case. See Dier 3 Eliz. fo. 203. an exposition of the said Act of 1 El. concerning hearing of Wafs.

## CAP. XCIII.

## Of News, Rumors, &amp;c.

Tacitus.

Int.leg. Alveredi  
cap. 28.

**S**EE the Second part of the Institutes, W. 1. cap. 34. News. See also in the fourth part of the Institutes, cap. Chancery, in the Articles against Cardinal Woolsey, Artic. 32. Convicia, si irascaris, tua divulgata, secreta exolescunt; If you seek to revenge slanders, you publish them as your own; if you despise them, they vanish.

The Law before the Conquest was, that the author and spreader of false rumors amongst the people had his Tongue cut out, if he redeemed it not by the estimation of his Head.

## CAP. XCIV.

## Of Weights and Measures.

**S**EE the second part of the Institutes, W. 1. cap.4. and the exposition upon the same.

## CAP. XCV.

## Of Apparel.

**D**ivers Acts of Parliament have been made against the excess of Apparel in the Reign of E. 3. As 11 E. 3. cap. 2. & 4. 37 E. 3. ca. 8. 9. 10. 11. 12. 13. 14. 38 E. 3. cap. 2. In the Reign of E. 4. 3 E. 4. cap. 5. 22 E. 4. cap. 1. In the Reign of H. 8. 1 H. 8. cap. 14. 6 H. 8. cap. 1. 7 H. 8. cap. 7. 24 H. 8. cap. 13. 33 H. 8. cap. 5. 37 H. 8. ca. 7. 1 & 2 Ph. & Mar. ca. 2. 4 & 5 Ph. & Mar. c. 2. 5 El. ca. 6. 8 El. ca. 11. 13 El. ca. 19. Some of them fighting with, and cuffing one another, some of them expired. But sozasmuch as those that stood in force were obsolete, and remained but as snares to catch oꝝ ver men at the pleasure of the Promooter; at the Parliament holden Anno 1 Ja. all Acts of Parliament before the time made concerning Apparel are repealed, and abrogated, and since that time no Act hath been made concerning Apparel, and so standeth the Law at this day. Thre costly things there are that do much impoverish the Subjects of England, viz. Costly Apparel, costly Diet, and costly Feasting. The best mean to repress costly Apparel, and the excess thereof, is by example: for if it would please great men to shew good example, and to wear Apparel of the Cloth and other Commodities wrought with in the Realm, it would best cure this vain and consuming ill, which is a branch of Prodigality, and herewith few wisemen are taken. If you will look into the Parliament Roll of 2 H. 6. you shall see what plain and frugal Apparel that renowned King H. 5. after he was King did wear, his Gown of less value then 40 s.

1 Jac.R. ca. 25.

Excess of Apparel is best cured, exemplo &amp; vituperio

Rot.Parl. 2 H 6. nu. 30.

Magna corporis cura, magna animi incuria.

Non inductur mulier veste virile, nec virutetur veste foeminea: abominabilis apud Deum, qui facit hoc. Deut. 22. 5.



## CAP. XCVI.

## Of Diet.

*a* Rot. Claus.  
*g* E.2.m.26. in  
 Dorfl. intitled,  
*Ordinatio super  
 mensuratione ser-  
 volorum.*  
*b* 2 E.6. cap.19.  
 5 E.6. ca.3.  
 5 El.ca.5.  
 27 El.ca.11.  
 35 El.ca.7.

*\* Lent 2. Saxon.  
 Quinresme.*

*Quadragesima.*  
*c* Hereof see the  
 4. part of the In-  
 stitutes, cap. The  
 Court of Audi-  
 ence, &c. and Fa-  
 culties.

*\* Vide Britton  
 cap.53. and other  
 books make men-  
 tion of these.*

*d* Luc. c.21. v.34.  
 Rom. ca.13. v.13.  
*Eccelesiasticus*  
 ca.37.v.30,31.  
*e* *Eccelesiasticus*  
 31.20.  
*f* Cicero.

Horace 2. Ser.2.

*g* From whence  
 excess of drinking  
 in England came.  
*h* From whence  
 troops of idle ser-  
 vingmen came in-  
 to England.

*i* 4 Jacobi c.5.  
 See 1 Jac.cap.9.  
 7 Jac.cap.10.  
 21 Jac. 7. an ex-  
 cellent Law.

*ana salus sanis  
 nullam potare sa-  
 latem.*

**T**here was *a* an Ordinance made by King E. 2. by advice of his Council, against the excess of Diet, but because it had not the strength of an Act of Parliament, it wrought no effect.

*b* It is provided by Statutes made in the Reign of E.6. and Queen Elizabeth, that no Flesh shall be eaten on Fish-days, viz. Friday, Saturday, Embring days and Vigils, and the time of *\* Lent*; *c* and for licences to eat Flesh on Fish-days, &c. See the Preamble of the Statute of 2 E.6.ca.19.

Embring days, so called, because in former times when they fasted they put Ashes or Embers on their heads. Job 2.12. Jer.6.26. 2 Sam.13.19. And as the natural conversion of the flesh of the body is to dust, so the sins of the Soul, (unrepented) are turned to fire, and this was shadowed under Embers that ever keep fire.

*\* These Embring days are the week next before Quadragesima, so called, for that it is the fortieth day before Easter, and is the first Sunday in Lent. So Quinquagesima the Sunday fifty days before Easter, Sexagesima sixty days before Easter, and Septuagesima seventy days before Easter.*

Before these late Acts the eating of Flesh on Fridays was punishable in the Ecclesiastical Court, as yet it is, the Jurisdiction being saved by the said Acts.

But there is no Act of Parliament against excess of Diet, for it is known to be so hurtful for mans body, and so obscureth the faculties of the mind, as the understanding, memory, &c. as to men, specially to Christian men, there needed no Law at all to be made, ever being mindful of that Caveat, *d* Attendite autem vobis, ne forte graventur corda vestra in crapula, & ebrietate, &c.

*e* Vigilia, & cholera, & tortura viro infrunito; Somnus sanitatis homini parco, dormiet usque in mane, & anima illius cum ipso delectabitur. The Pagan Heathen men by the light of nature agree hereunto. *f* Tantum cibi & potus adhibendum est, ut reficiantur vires, non opprimantur.

Accipe tu, victus tenuis quæ quantaque secum  
 Afferat, imprimis valeas bene: nam variæ res  
 Ut noceant homini, credas, memor illius escæ,  
 Quæ simplex olim tibi federit: At simul assis  
 Miscueris elixa: simul conchyliis turdis:  
 Dulcia se in bilem vertent, stomachoque tumultum  
 Lenta feret pituita: vides, ut pallidus omnis  
 Cœna defurgat dubia? — — —

Ex plenitudine generantur morbi, qui superant medicorum artem.

King Edgar permitting many of the Danes to inhabit here (*g* who first brought into this Realm excessive drinking) was in the end constrained to make a Law against this excess (which never cometh alone) driving certain nails into the sides of their cups, as limits and bounds, which no man upon great pain should be so hardy as to transgress.

William of Malmesbury, comparing Englishmen and Normans together, saith, that in his time, the English manner was to sit bibbing whole hours after dinner, *h* and that the Norman fashion was to walk the Streets with great troops, with idle and loose servingmen following them, both which were causes of many disorders and outrages.

*i* If the excess of drinking extend to the loathsome and odious vice of Drunkenness, it is punishable by Act of Parliament. And to say the truth, the ancient Britains were free from this crime.

Ecce

Ecce Britannorum mos est laudibilis iste,  
Ut bibat arbitrio pocula quisque suo.

And the Laws against Drunkenness are very new.

Nothing is here said against that great Peacemaker, and branch of liberality, orderly Hospitality, but against the dainty and disorderly excess of meats and drinks, which is a species of Prodigality: for it is provided by Act of Parliament, that the grace of Hospitality shall not be withdrawn from the needy.

W.1. 3 E.1. ca.1.

See the Statute of 37 E.3. ca.8. against excessive Apparel and Diet: but it was repealed in the next Parliament, 38 E.3. ca.2.

## C A P. XCVII.

### Of Buildings.

**W**E have not read of any Act of Parliament now in force made against the excess of Building, or touching the order or manner of Building; but it is a wasting evil, whereunto some wise men are subject. But the Common Law doth prohibit any Subject to build any Castle, or House of strength imbattled, &c. without the Kings Licence, for the danger that might ensue. <sup>a</sup> Also the Common Law prohibiteth the building of any Edifice to a common Purfance, or to the Purfance of any man in his house, as the stopping up of his Light, or to any other prejudice or annoyance of him. *Ædificare in tuo proprio solo non licet, quod alteri noceat.*

<sup>b</sup> In Deuteronomy it is said, Cum ædificaveris domum novam, facies e murum tecti per circuitum, ne effundatur sanguis in domo tua, & sis reus, labente alio, & in præceps ruente.

<sup>d</sup> I like well the Counsel to a Nobleman, whosoever gave it, Si vis (ait ille) ædificare domum, inducat te necessitas, non voluptas; cupiditas ædificandi ædificando non tollitur; nimia & inordinata cupiditas ædificandi expectat ædificii venditionem: Turris completa, & arca evacuata faciunt tarde hominem sapientem.

Ædificare domos multas, & pascere multos,  
Est ad pauperiem semita laxa nimis.

To build many houses, and many to feed,  
To poverty that way readily doth lead.

Of these three it hath been truly said; Vestium, Conviviorum, & Ædificiorum luxuria ægræ civitatis sunt indicia, & species prodigalitat. <sup>c</sup>

But by the Common Law, and general custom of the Realm, it was lawful for Bishops, Earls, and Barons to build Churches, or Chappels within their Sees: and hereof King John informed Pope Innocentius the third (naming only, honoris causa, the Bishops and Baronage of England, albeit this liberty extended to all) with request, that this liberty to the Baronage might be confirmed. To these Letters the Pope made this answer, Quod enim de consuetudine regni Anglorum procedere regia Serenitas per suas literas intimavit, ut liceat tam Episcopis, quam Comitibus, & Baronibus Ecclesias in feudo suo fundare, laicis quidem principibus id licere nullatenus denegamus, dummodo Diocesani Episcopi eis suffragetur assensus, & per novam structuram veterum Ecclesiarum iustitia non ledatur. Whereas the Baronage had absolute liberty before, now the Pope addeth the consent of the Bishop: but that addition bound not, seeing it was against the liberty of the Baronage warranted by the Common Law: and we would not have rehearsed this Epistle, but that it is a proof what the general custom of the Realm was concerning the building of

See the 1. part of the Institutes, Sect. 1. fo. 5. a. Ver. Mag. Cart. 1. part fo. 162. cap. Eschactry, &c. 14 H. 6. nu. 7. licence to the D. of Gloc. to imbattel Greenwich.

<sup>a</sup> Li. 9. f. 54. & 58. Lib. 5. fo. 101. &c.

<sup>b</sup> Deut. 22. 8. <sup>c</sup> Battlements, This was for safety only

<sup>d</sup> Bernhard consilium.

Euripides translated by Sir Th. Moor.

Vide the like in the Regist. 35. b. Prohib. de decimis sepeparis. In Epist. decret. Innocent. 3. l. 10. pag. 228.

Tr. 20 E. 1. Rot. 13. in Banco Rich. de Turnys case. Eborum.



Churches by the Paronage of England. And albeit they might build Churches without the Kings licence, yet could they not erect a spiritual politique body to continue in succession, and capable of indowment without the Kings licence: but by the Common Law before the Statutes of Mortmain, they might have indowed this spiritual body once incorporated, perpetuis futuris temporibus, without any licence from the King, or any other.

And as the Law is in cases of Devotion and Religion, so it is in cases of Charity: Any man may erect and build a house for an <sup>a</sup> Hospital, School, <sup>b</sup> Monking house, or house of Correction, or the like, without any licence, for that is but a preparation, and may be done as owner of the soil; but by the Common Law could not incorporate any of them without licence, but now he may, & indow them with lands in certain cases, <sup>a</sup> by the Statutes of 39 Eliz. ca. 5. and 3 Car. ca. 1. as in the Second part of the Institutes in the exposition of those Statutes it appeareth.

Concerning the building or erecting of <sup>b</sup> Tombs, Sepulchers or Monuments for the deceased, in Church, Chancel, Common Chappel, or Churchyard in convenient manner, it is lawful, for it is the last work of charity that can be done for the deceased, who whiles he lived was a lively Temple of the holy Ghost, with a reverend regard, and Christian hope of a joyful Resurrection. And the defacing of them is punishable by the Common Law, as it appeareth in <sup>c</sup> the book of 9 E. 4. 14. a. And so it was agreed by the whole Court, Mich. 10. Ja. in the Common pleas, between Corven and Pym. And for the defacing thereof, they that build or erect the same shall have the action during their lives, (as the Lady Wiche had in the case of 9 E. 4.) and after their deceases, the heir of the deceased shall have the action. But the building, or erecting of the Sepulcher, Tomb, or other Monument, ought not to be to the hindrance of the celebration of divine service. And in that case of Corven it was resolved, that albeit the freehold of the Church be in the Parson, yet if a Lord of a Mannor, or any other that hath an house within the Town or Parish, and that he, and all those whose estate he hath in the mansion-house of the Mannor, or other house, hath had a seat in an Isle of the Church, for him and his Family only, and have repaired it at his proper charges, it shall be intended that some of his Ancestors, or of the parties whose estate he hath, did build and erect that Isle for him and his Family only: and therefore if the Ordinary endeavour to remove him, or place any other there, he may have a Prohibition. <sup>d</sup> It was further resolved, that if any man hath a house in a Town or Parish, and that he and those whose estate he hath in the house, hath had time out of mind a certain Pew, or Seat in the Church maintained by him and them, the Ordinary cannot remove him, (for prescription maketh certainty the mother of quietness) and if he do, a prohibition lyeth against him. <sup>e</sup> But where there is no prescription, there the Ordinary that hath the Cure, and charge of Souls, may for avoiding of contention in the Church, or Chappel, and the more quiet, and better service of God, and placing of men according to their qualities and degrees, take order for the placing of the Parishioners in the Church or Chappel publick, which is dedicate and consecrate to the service of God.

Nota, Funeral expences according to the degree and quality of the deceased, are to be allowed of the goods of the deceased, before any debt or duty whatsoever, for that is opus pium, or charitativum.

Amongst the people of Almighty God, as it appeareth in the holy History, Sepulture was ever had in great reverence, not only of Kings, but of other men; as (amongst many others) good old Barzillai, when he had excused himself for not going with the King to Jerusalem, he concluded. Obsecro ut revertar servus tuus, & moriar in civitate mea, & sepeliar juxta Sepulchrum patris mei, & matris mee, &c.

And also the moral Heathens had building and erecting of Sepulchers, or Monuments, in great account, as it doth appear by the Seven wonders of the world, which for memory may be expressed in these few Verses.

1. Pyramides

<sup>a</sup> Lib. 10. fo. 27.

Le café de Suttons Hospital.

See the Statute of 39 El. cap. 4. whereby Authority is given to Justices of Peace to build and erect houses of Correction, &c.

<sup>a</sup> 39 El. cap. 5.

<sup>3</sup> Car. cap. 1.

<sup>b</sup> Tumba, tumulus, sepulchrum.

<sup>c</sup> 9 E. 4. 14. the Lady Wiches case, wife of Sir Hugh Wiche. Mich. 10. Ja. in Communi Banco Int<sup>r</sup> Corven & Pym.

Barth. Cassaneus fo. 12. Conclus. 29.

Adio datur, siquis arma in aliquo loco posita delevit, seu abrasit, &c.

<sup>d</sup> 8 H. 7. 12. a. per Husly accord.

Pasch. 10 Jac. in curia Cam. Stellatæ Inter Husly Plaintiff, & Kath. Layton, & al<sup>i</sup> Defendants issint resolve per le Court.

<sup>e</sup> 8 H. 7. 12. a. acc. 12 H. 7. 12. per Husly.

2 Sam. 19. 37.



1. Pyramides Memphis. 2. Babylonis moenia celsæ,
  3. Templum ingens Ephesi virgo Diana tuum,
  4. Mausoli Cariæ monumentum. 5. Raraque Pharo
  - Turris, 6. Olympiaci splendida imago Jovis,
  7. Denique apud Rhodios splendentis statua Phœbi :
- Hæc septem mundus mira, viator, habet.

Besides the religious, and Christian regard abovesaid, these monuments do serve for four good uses and ends. First, For evidence, and proof of descents, and pedigrees. Secondly, What time he that is there buried deceased. Thirdly, For example, to follow the good, or to eschew the evil. Fourthly, To put the living in mind of their end, for all the sons of Adam must die. Statutum est hominibus semel mori.

Monumentum servat alicujus rei memoriam aliter interituram, eamque nobis representat : and therefore a Monument is called a Memorial.

Monumentum dicitur à monendo ; quicquid enim nos monet est monumentum, ut sepulchrum, quod nos sumus mortales.

Cum tumulum cernis, tum tu mortalia spernis :

Esto memor mortis, sisque ad cœlestia fortis.

It is to be observed, that in every Sepulcher, that hath a monument, two things are to be considered, viz. the monument and the sepulture or burial of the dead.

\* The burial of the Cadaver (that is, caro data vermibus) is nullius in bonis, and belongs to Ecclesiastical cognisance, but as to the monument, action is given (as hath been said) at the Common Law for defacing thereof.

\* Britton fo. 84. b.

In the year of our Lord 1586. and in the 28 year of the Reign of that glorious Queen Elizabeth, was the old gate called Ludgate in the City of London (as Stow saith) taken down to be new builded : There was found coveched within the old wall thereof a stone, wherein was graven in the Hebrew tongue and Characters, \* an Epitaph, signifying in English : This is the Tomb of Rabbi Moses son of the illustrious Rabbi Isaac : which certainly was before the 23 year of the Reign of H.2. Anno Domini 1177. for before that time all the Jews in England were buried within the City of London, and in that year, saith Hovenden, Dominus Rex pater dedit licentiam Judæis terræ suæ habendi cœmeterium in qualibet civitate Angliæ, extra muros civitatum, ubi possunt rationabiliter, & in competenti loco emere, ad sepeliend' mortuos suos : prius enim omnes Judæi mortui Londonia ferebantur sepeliendi.

Stow in his Survey of London, fo. 19.

\* For so is the truth.

Ro. Hovenden Anno Dom. 1177, Holl. eodem An. fo. 101. b. 20.

And albeit Churches or Chappels may be built by any of the Kings subjects, (as hath been said) without licence, yet before the Law take knowledge of them to be Churches or Chappels, the Bishop is to consecrate or dedicate the same : and this is the reason, that a Church or not a Church, a Chappel, or not a Chappel, shall be tried, and certified by the Bishop.

8 H.6. 32. 37.

See for this dedication or consecration the 43 chapter of Ezechiel, the 23 chapter of Genesis, the 90 Psalm, the 24. 26, 27. 84. and 134 Psalms, the 2 of Samuel 6. 10 of Saint John, vers. 22. to the end.

Vide inter leges Edwardi Confessoris cap. 3. Similiter ad dedicationes, ad Synodos, & ad Capitula venientibus, &c. in eundo, & redeundo sit summa pax.

We find in ancient times that Vaults, hollow places, or substructions under the ground were made by men for receits, or receptacles for keeping of their wives, children, money and goods secret, to avoid violence, and rapine in time of hostility or rebellion, and we find no Law against them.

De subterraneis substructionibus, &c. cryptis.

These kind of buildings we had from the Germans, as we find it in Tacitus, who treating of the old Germans, saith, Solent & subterraneos specus aperire, & si quando hostis advenit, aperta populatur, abdita autem & defossa aut ignorantur, aut eo ipso fallunt, quod querenda sunt. They use to build Vaults under the earth, and if the enemy come, he destroyeth all open and above ground, but such things as lie hidden in the cave, either they lie unknown, or at least they deceive him, in that he is enforced to find them out. Neither have we found any

Tacitus.



\* I the manner of  
Mist. r Level in  
Com' Oxon' &c.  
a Camden Linc.  
pag. 4c6.

b See the Statute  
of 8 El. c. 12. and  
the Letters Patents  
of the Lord Ad-  
miral.

c 4 H. 8. cap. 1.  
d De propugnacu-  
lis, munitioris,  
munitioris, &c. of  
Bulwarks, Barbi-  
cans, Block-hou-  
ses, Piles, &c.  
e 13 E. 1. cap. 46.  
32 Aff. 5. 7 H. 4. 39.  
f 7 El. Dic. 240.

g See the 2. part  
of the Institutes.  
W. 2. cap. 24. Lib.  
5. fol. 101. Lib. 8.  
fol. 46. Lib. 9. f. 54.  
58.  
h See lib. 4. f. 84.  
Lutterels case, and  
the authorities  
there cited.  
i 31 Eliz. cap. 7.

Lamb. Perambula-  
tion of Kent.  
These words, you  
shall read in Re-  
cords concerning  
priviledges.

k 29 E. 3. 16. 2 H. 4.  
f. 3. 9 E. 4. 34.  
l 4 H. 4. c. 2. Lib. 11.  
f. 29.  
Alex. Poulters case

any licence of the King to make them, nor punishment of any that made them without licence, and yet many have been made by many subjects, some whereof we have seen.

a We read of Alexander Bishop of Lincoln, in the reign of H. 1. and King Stephen, a Roman horn, who was, infans substructionibus ad infaniam de-  
Status.

b No person can build or erect Light-houses, Pharos, Sea-marks or Beacons without lawful warrant and authority.

Lumina noctivagæ tollit Pharus æmula Lunæ.

In Light-house top is rear'd the light,  
As high as the moon that walks by night.

c Provision was made by authority of Parliament for building and erecting Blockhouses, Bulwarks, Piles, and the like, for without Parliament subjects cannot be charged with building, d or erecting of them, and that Act is expired.

e The Lord of the soil may build a Windmill, Shepcote, Dairy enlarging of a Court necessary, or a curtilage in grounds, where men have common of pasture.

f A man cannot erect any building upon his own ground in the Kings Forest, but it is a purpresture, and may either be demolished or arrented to the Kings use, &c. at a Justice Seat.

Concerning houses of husbandry and tillage, the Statutes of 4 H. 7. cap. 19. 7 H. 8. c. 1. 27 H. 8. c. 22. 5 E. 6. c. 5. 5 El. cap. 2. are repealed by the Statute of 21 Jac. cap. 28. and the Statutes of 39 El. cap. 1. & 2. are expired, for that they were so like Labyrinthes, with such intricate windings and turnings, as little or no fruit proceeded of them.

g No man can erect an house or building to the Pulfance of any other.

h See where a man hath any house or mill, &c. and having any priviledge or thing appurtenant thereunto, and pull it down and build a new, where the pri-  
viledge or appurtenant remain, and where not.

i Concerning the erecting, &c. of Cottages, see the Statute of 31 El. c. 7. which could not be restrained in such sort as they are, but by authority of Parliament.

There was a Statute made Anno 35 El. (when I was Speaker) against buildings in the Cities of London, or Westminster, or within three miles of the gates of the City of London, and against the dividing and converting of any dwelling house or building into divers habitations, and against Inmates; but that endured but for seven years, and until the end of the next Session of Par-  
liament, which Act, being holden dangerous, was not continued at the Session of Parliament holden in 43 El. being the next Session after the seven years, and therefore expired with the same. In the mean time there was a Law made against new buildings, &c. which then was a warrant, and since hath been a colour for divers proceedings in Courts of Justice, not observing the expiration of that Law; but now that Law hath long since lost his force, and the ancient and Fundamental Common Law is to be followed.

Sylliva, or Sulliva is a word derived from the Saxon Sylle, and signifieth a posse, or plate fixed in the ground: the Saxon word is not yet out of use, for every man knows what a groundsil is.

Pera, a Pær, derived from the Latin word Petra: Plance, of the English word Planks, for boards or tables, in use also at this day.

Having spoken of erecting of houses and buildings, &c. we will tell you what we find in our Books and Records of Dilapidation, and decay of buildings.

k Dilapidation of Ecclesiastical Palaces, houses and buildings is a good cause of deprivation.

l It appeareth by the Statute of 4 H. 4. c. 2. that Depopulatores agrorum were great offenders by the ancient Law, and that the Appeal or Indictment thereof ought not to be general, but in special manner; and provides, that the offenders therein might have their Clergy. They are called Depopulatores agrorum, for that by prostrating or decaying of the houses or habitation of the Kings people, they depopulate, that is, dispeople the Towns.

Prohibitio



Prohibitio Regis quod Incolæ de villa de Southampton non prosternent domos suas in alias migraturi regiones. Dorf. Claus. An. 43 E.3. m. 23.  
 Simile pro magna Jermenutha. Rot. Claus. An. 21 R.2. m. 15.  
 That which may lawfully be prohibited before it be done, may be justly punished after it be done.  
 And herewith we will close up this Chapter : that the Law doth favour the supposition of houses of habitation, and use for mankind. First part of the Institutes, l. 54. b. 55. b.

## CAP. XCVIII.

### *De Lupanaribus & Fornicibus, &c.*

#### Brothel-houses, Estuis, Bordelloes.

**T**HE keeping of them is against the Law of God, on which the Common Law of England in that case is grounded. \* Non offeres mercedem prostibuli, nec precium canis in domo Dei tui, &c. Quia abominatio est utrumq; apud Dominum Deum tuum.

And the keeper, he or she, of such houses is punishable by Indictment at the Common Law by fine and imprisonment : for although adultery and fornication be punishable by the Ecclesiastical Law, yet the keeping of a house of Lawdly or Stews, or Brothel-house being as it were a common nuisance, is punishable by the Common, and is the cause of many mischiefs, not only to the overthrow of the bodies, and wasting of their livelihoods, but to the endangering of their souls. For the mischiefs ensuing hereupon, see 11 H.6. cap. 1. 1 H.7. f.6. 12. 13 H.7.6. 27 H.8. Rot. Parl. 14 R.2. nu. 32.

King H.8. suppressed all the Stews or Brothel-houses, which long had continued on the Bankside in Southwark, for that they were (as hath been said) prohibited by the Law of God, and by the Law of this land. And those infamous women were not buried in Christian burial when they were dead, nor permitted to receive the rites of the Church whilest they lived.

The word Estuis or Stewes is French, we having no English word for it.

Before the Reign of H.7. there were eighteen of these infamous houses, and H.7. for a time forbade them : but afterwards twelve only were permitted, and had signs painted on their walls; as a Boars head, the Cross keys, the Gun, the Castle, the Crane, the Cardinals hat, the Well, the Swan, &c.

Many wicked and common women had seated themselves in a Lane called Water-lane, next to the house of the Friars Carmelites in Fleet-street : this being an open and known wickedness, King E. 3. to the end these Friars might perform their Vows, one of which was, to live in perpetual chastity, took order for removing of these women. The Record saith, Rex præcipit Majori Civitatis London quod amoveri faciat omnes mulieres meretrices in venella prope Fratres Carmelitarum in Fleetstreet inhabitantes.

Read 3 Regum cap. 14. verse 24. eodem lib. cap. 15. verse 12. & 4 Regum cap. 23. verse 7.

And by the Common Law it appertaineth to the Marshal of the Kings House to free, or protect the Court from Femmes puteins, which is more particularly explained by Fleta, who saith, Mareschalli interest virgatam à meretricibus omnib; protegere & deliberare, & habet mareschallus ex consuetudine pro qualibet meretrice cõi infra metas hospitii inventa 4d primo die; quæ si iterum in baliva sua inveniatur, capiatur & coram Seneschallo inhibeatur ei hospitium Regis, Reginae, & liberorum suorum, ne iterum ingrediatur, & nomina earum imbreventur : quæ

\* Numb. 25. 9.  
 Deut. 23. 18.  
 Ezek. 16. 24. 31. 39  
 Joel 3. 3. 2 Mach.  
 4. 12. Hospes meretricum Leno Leno, unde Lencinium.

By Proclamation under the Great Seal, 30 Martii. 37 H.8.

Fabian. Chron. Stowe.

In Dorf. Claus. 21 E.3. part 1. m. 6.

Fratres beatæ Mariæ de Monte Carmeli, called White Friars.

7 E.3. fo 23. 24.  
 Fleta lib. 2. cap. 5.  
 Lib. 10. Le case de Marshallsea. fo. 77.



quæ si iterum inventæ fuerint hospic' sequutrices, tunc aut remaneant in prisona in vinculis, aut sponte prædict' hospicia abjurentur; quæ si autem tertio inventæ fuerint, considerabitur quod amputetur eis' tressoria, & tondeantur; quæ quidem si quarto inveniantur, amputentur eis superlabia, ne de cætero concupiscantur ad libidinem.

Rot. Par. 14 R. 2.  
nu. 32.

14 R. 2. It is enacted that no Cstews or Brothel-houses should be kept in Southwark, but in the Common places theretofore appointed.

35 H. 6. Bar 162.

So odious and so dangerous was this infamous vice (the fairest end whereof is beggery) that men in making of Leases of their houses did add an expresse condition, that the lessee, &c. should not suffer, harbor, or keep any Feme puteine within the said houses, &c.

1 H. 7. fol. 6. &c.

See the case of 1 H. 7. the custom of London for entering into an house, and arresting of an Abowtner; and carrying her to prison. In ancient times adultery and fornication were punished by fine and imprisonment, and inquirable in Turns and Læis by the name of Letherwite. We find in Domesday De adulterio vero per totum Chent', habet Rex hominem (i. amerciamantum hominis) & Archiepiscopus mulierem, (i. amerciamantum mulieris) &c.

Domesday.  
Chent. Dover.

Vidua, si alicui se non legitime commisceat. 20 s. emendabit, puella vero 10 s. pro consimili causa.

Ibid. Cestrie civitas.

Adulterium faciens 8 s. & 4 d. emendabit homo, & femina tantundem. Rex habet hominem adulterum, Archiepiscopus feminam.

Ibid. Sudsex.

Lewes.

Domesday.

Hundredes.

Bracton.

Flota.

Rastal term. leg.

Stat. de expol. t.  
vocab.

But now these offences belong to the Ecclesiastical Court.

Legrewita, or Logiewita, Legergeld, or Logergeld, of Legre or Logre for a bed and Wite amerciamant, by common speech Letherwite or Laiterwite, Lierwite, Lotherwite.

Childewite is for the Lord to take a fine for his bondwoman defiled and begotten with child.

Bawdry, Lenocinium, unde Ribawdry & Ribaude, i. Impudicus rabula. See Parliam. 50 E. 3. nu. 61. of Ribauds and Robertsmen.

## CAP. XCIX.

De assentatione, Fucologia, Pseudologia,  
Flattery.

**W**E find a Law befoze the Conquest against Flatterers in these words, Licceparj Leogopar nepepar 7neapapar 7ober 7paman habban, &c. which Dr. Lambard tranſlateth thus, Assentatores, mendaces, prædones, & rapaces offensionem Dei gravissimam incurrant, &c.

The ancient Manuscript tranſlateth it thus, Seductores, mendaces, rapaces, & raptores Dei gravamen habeant. And both translations do in effect agree, for a flatterer is a seducer for some private end, by fained praise and humouring of another, whereby he hath an outreguidance of himself, his state and actions, Isti ducunt & seducunt.

The occasion of making this Law was, that King Canutus had been seduced by Flatterers, who had shewed him his face and state in a false Glass, making too great a shew of his own parts, actions, and state, to the end to make him conceit himself to be better and greater then he was, and his adversaries less then in truth they were. Nay, this King by wicked flatterers assumed to him Divine power and honour: for coming from Sea, he set his feet on the Sea Strand, as the Sea was flowing, and commanded the Sea not to rise to wet his Lordly and Majestick feet nor clothes: The Sea keeping on his accustomed course, both wet his Feet and Thighs also: whereat being sore amazed, repented his presumption (which he had undertaken by wicked flattery.)

And well is the Flatterer marshalled in this Law with liars, thieves, and raveners: for the Divine described Flatterers to be those, Qui colunt aliquem, & auferunt ab eo aliquid temporarii boni. So as it is peccatum viscatum, it getteth away much and giveth smoke.

And the Holy Ghost hath stiled flattery oleum peccatoris, that is, the oile of the sinner, *κατ' ἐξοχην*, that is, of him that excedeth others in sin, and doth affect greatness: that is, the head, making it greater and more prosperous then it is, as you may read in the Prophet David: Corripiet me justus in misericordia & increpabit me, oleum autem peccatoris non impinguet caput meum. Whereby he being both a King and a Prophet, preferreth the reproof, nay the sharp rebuke of the just and vertuous, befoze the smooth humouring of the flatterer (per nomen) of the sinner. This oleum peccatoris is mel venenatum, & venenum mellitum, and commonly affecteth greatness, and is called Lordbane.

And again, David speaking of the flatterer saith, His words are smother then oile, and yet are they very Swords. Hæc dicit Dominus Deus, Væ qui confuunt pulvillos sub omni cubito manus, & faciunt cervicalia sub capite universæ ætatis ad capiend' animas, &c. Thus saith the Lord God, Woe to them that sow pillowes under all armholes, and put kerchiefs upon the heads of every age to hunt Souls. They make the King glad with their wickedness, and the Princes with their lies. In malitia sua lætincaverunt regem, & in mendaciis suis principes.

The flattering mouth worketh ruine. And more Kings and Kingdoms have been overthrowen by the means of flattery, then by publick hostility. And this is the cause that we have mentioned the said ancient Law for their punishment, they be lawfully banished from Princes Courts, and Subjects houses.

Ut videat, cæco fit simia præda leoni:

Rex cæcus cernit, cum sycophanta perit.

Inc. leges Canuti, fo. 106. c. 7. Lam. Fatalis magnarum potestatum pestis, adulatio. Semper assentor id, quod is ad cuius voluntatem dicitur, esse magnum ut in Terentio: magnas vero agere gratias mihi, &c. satis erat respondisse magnas, ingentes inquit.

Psal. 141. 9.

Psal. 55. 22.

Ezek. 13. 18.

Osee. 7. 3.

Prov. 26. 28.

Qu. Curtius.



Nota, enemies to  
Laws punished by  
the Laws.

*a* Rot. Par. Anno  
17 H. 3. Nos inte-  
gre & firmiter te-  
nebimus iudicium  
de Huberto de  
Burgo, per Baro-  
nes datum.

Speed 18 H. 3. 520.

*b* Rot. Par. 7 E. 2.

Ne quis occasione-  
tur per mortē Per-  
de Gaveston Hil.  
318. a. & ib 321. a.

*c* Vet. Mag. Cart.

2 part 44. ib. 50.

exilium Hugonis,

& 54 Ne quis oc-

casionetur pro se-

loniis in prosecu-

tione de Spencer

parris & filii.

*d* Rot. Par. 11 R. 2.

nu. 8. &c.

*e* Rot. Par. 28 H. 6.

nu. 19. until 47.

*f* Hollensh. 713.

a. 30.

*g* Hollensh. 722.

748. 755. a.

2 H. 7. 10.

*h* Coram Rege

An. 1 H. 8. In

information vers.

D. Peter & alios.

The like indict-

ment against Ed.

Dudley.

Tr. 23 H. 8. coram  
rege. Rot. 14.

What fearful ends flattering favourites, corrupters of their Sovereign Liege Lords, abusing their favours in subversion of their Laws, have had, appeareth in our Parliament Rolls, Records and Histories.

*a* King H. 3. had Hubert de Burgo Chief Justice and Earl of Kent, and many others: but this was his safety, that upon just occasion without any great grief he could forego a Favourite. See in the Preface to the second part of the Institutes, his counsel to H. 3. to burn Magna Carta.

E. 2. had *b* Pierce de Gaveston, the *a* Spencers, &c. and the Spencers proceedings against le grand Charter by name (amongst other things) tending to the subversion of Law, &c.

R. 2. had Sir Robert Tresilian Chief Justice, &c. and Robert Earl of Oxford and Duke of Ireland, &c.

H. 6. had *e* William de la Pole Duke of Suffolk, &c. who endeavoured to have brought in the Civil Laws, which was the occasion that the Chief Justice Fortescue wrote in the commendation of the Laws of England, preferring them for the government of this land before the Civil Laws. This Duke, with others, plotted the death and destruction of Humfrey the good Duke of Glouc. who ever stood in his way.

E. 4. had *f* William Lord Hastings the Kings Chamberlain, and Captain of Calice. All these came to fearful and untimely ends.

R. 3. had *g* Sir John Catesby one of the Justices of the Common Pleas, and Henry Duke of Buck. &c. privy plotters and counsellors with R. 3. for the most execrable murder of his Nephews, E. 5. and Richard Duke of York. What a miserable end the Duke had, you know: and Justice Catesby in his Journey to London, in the Kings high way had subitanear & improvissam mortem.

H. 7. had *b* Sir Richard Empson, Edmund Dudley, &c. Sir Richard Empson was indicted, Quod ipse consiliarius excellentissimi Principis Henrici nuper Regis Angliæ septimi Deum præ oculis non habens, sed ut filius diabolicus subtiliter imaginans honorem, dignitatem, & prosperitatem dicti nuper regis, ac posteritatem regni sui Angliæ minime valere, sed ut ipse magis singulares favores dicti nuper Regis adhibere, unde magnat' fieri potuisset, ac totum Regnum Angliæ secundum ejus voluntatem gubernare, falso, deceptive, & proditorie legem Angliæ subvertens, diversos ligeos ipsius nuper regis, ex sua falsa covina, & subtili ingenio, contra communem legem regni Angliæ de diversis felonis, &c. indictari fecit, &c. per quod plures & diversi populi dicti nuper Regis hiis gravaminibus, & indebitis exactionib. multipliciter torquebantur, in tantum quod populi dicti nuper regis versus ipsum nuper regem multipliciter murmurabant, & malignabant in magnum periculum ipsius nuper regis regni sui Angliæ, ac subversionem legum & consuetudinum ejusdem regni, &c. And the like Indictment was against Dudley.

H. 8. had Thomas Woolsey Cardinal. Ipse intendens finaliter antiquissimas Angliæ leges penitus subvertere, & enervare, universumq; hoc regnum Angliæ & ejusdem regni populum legibus Imperialibus, vulgo dict', Legibus Civilibus, & earundem legum Canonibus subjugare, & subducere, &c.

We will for some causes descend no lower: Qui eorum vestigiis insistant, eorum exitus perhorrescant.

But that right be done to him who was a faithful favorite and counsellor to this King, we have seen a Manuscript that relateth, that Charles Brandon Duke of Suffolk, a wise and warlike person, was for many years before his decease, the greatest favorite the King had, upon whom he chiefly relied in all his weightiest affairs. This noble Duke deceased in August in the 37 year of the reign of King H. 8. After whose death the next time the King sat with his Counsel, and missing the good Duke, grievously lamented for him, and said, that when I was offended with any (as often I was) and acquainted him therewith, that he ever endeavoured to mitigate my displeasure, and never spake to me evil of any of them. And the King looking upon the Lords of his Counsel one after another, said, and so (my Lord) cannot you say, perusing them all throughout. A royal commendation of this great Duke, and a great argument of his piety and honour, that



that no subject had ever the indignation or displeasure of his Sovereign, by any private whispering of his.

We will conclude this chapter with one of our own Histories. Generaliter cunctorum habitatorum terræ peccatis inclusive ordines sumendo Mendicantium ad cumulandum causas malorum, &c. isti possessionatis invidentes, procerum crimina approbantes, commune vulgus in errore foventes, & utrorumque peccata comedentes, pro possessionibus acquirendis, qui possessiones renunciaverant pro pecuniis congregandis: qui in paupertate perseverare juraverant, dicunt bonum malum, & malum bonum, seducendo Principes adulationibus, plebem mendaciis, & utrosque fecum in devium pertrahentes, &c. Note what is said, that the full heap of the causes of Gods vengeance in those days, was made up by those flattering preaching Friars. But Parliaments, Palaces of Princes and Pulpits, should be free from adulation and flattery.

Anno 5 R. 2.  
Th. Wall. p. 281.

Read the story,  
and see the most  
lamentable estate  
of those times.  
Note these three  
PPP.

## C A P. C.

### Of false Imprisonment.

SEE the Second part of the Institutes, the Statute De 1 E. 2: de frangentibus prisonam, and the exposition upon the same.

See the Petition of Right, 3 Car. Regis, and Mag. Cart. cap. 29. And it is to be observed that before the Conquest it was thus provided. Qui hominem Paganum immerentem vinculis contrinxerit, 10 solidis noxiam sarcito; cum si verberibus affecerit, 20 solidorum poena esto; si suspensum in sublimem rapuerit, 30 solidis culpa pensator; si contumeliose capillum ejus morionis in morem tonderit, 10 solidi præstato; si caput in morem sacerdotis raserit, nec ipsum ligaverit, 30 solidos numerato; si barbam illi refecerit, 20 solidorum compensatio sequitur; si denique ei vinculis constricto capillos in morem sacerdotum abraferit 60 solidos pendito.

Int. leges Alveredi  
cap. 31.

By way of addition, here it is necessary to be known, how and by what means one that is in prison may be discharged. Every man that is in prison, either is imprisoned without lawful Mittimus (whereof we have spoken before ubi supra, and how he may be freed from imprisonment in that case) or with lawful Mittimus. He that is lawfully imprisoned, is either imprisoned by lawful commandment, and order or warrant, or by the Kings Writ: By commandment and order of any Court of Record; and this commandment, warrant or writ, is either for causes not being Treason or Felony, imprisonment of the same, nor other publick offence or cause, or inferiour causes to these: as contempts, private actions or suits. If any Court of Record commit a man for a contempt done in Court, they may discharge him by like order at their pleasure: but if they having authority, do commit him for Treason, Felony, or other crime, or for suspicion of the same, they cannot discharge him until he be inquired of, and either indicted and acquitted, or an Ignoramus found, and delivered by proclamation. <sup>a</sup> And so it is if any be taken and imprisoned by lawful warrant, or the Kings writ for Treason, Felony, or other crime, &c. he cannot be discharged by any without legal proceeding (but by the King only.)

<sup>a</sup> For bailment,  
See the Statute of  
Mag. Cart. ca. 29.  
W. 2. ca. 15. and the  
exposition thereof.  
1 & 2 Ph. & Mar.  
ca. 13.  
2 & 3 Ph. & Mar.  
cap. 10.

<sup>b</sup> 14 H. 6. 8. F. N. B.  
167 b

See 12 H. 6. 3.

<sup>c</sup> Mich. 1. Jac. in

banke le Roy.

Int. Withers &

Herly, adjudge

accord.

2. H. 8. 28. b.

1 R. 2. ca. 12.

10 H. 7. 3. 4. per

Vava or.

13 E. 3. Bar 253.

<sup>b</sup> If a Tagrant, refusing to serve, had been committed to prison upon the Statute of 23 E. 3. of Labourers by the Lord of the Town, or Justice of Peace, they might have discharged him, even as the Chancelor, &c. may commit a man for a contempt before him in Court, and discharge him again at his pleasure.

<sup>c</sup> If a man be taken by the Kings Writ in an action of debt or another private action, the Plaintiff may discharge the Gaoler of him and set him at liberty, though he be in execution: but if he be taken in an Appeal of Death, Robbery,



Kape, &c. the Plaintiff cannot discharge him, because it is a publick offence wherein the King hath an interest, and he may after Consult by the Plaintiff be arraigned at the Kings suit.

Fortescue ca. 53.  
fo. 127. b.

There are two great adversaries to the due execution of these Laws (as before hath been touched) especially in criminal causes, viz. Præcipitatio & morosa cunctatio. Precipitation; as a man or woman to be committed to prison, and within so short a time to be indicted and arraigned, as it is not possible for them to send for, or procure their witnesses; this certainly is precipitation, for the Law both in personal and real actions doth give the party, Tenant or Defendant, a convenient time without respect of persons to answer, &c. much more it ought to be in case of life, Nec unquam in judiciis tantum eminent periculum, quantum parit processu festinatus: and again, Crèbro in deliberationibus judicia maturescunt, in accelerato processu nunquam: and specially in case of life. As for morosa cunctatio, froward or weyward delay; see the Second part of the Institutes Glouc. ca. 26. And we will conclude this Chapter with the rule of Law, Quod in criminalibus, probationes debent esse luce clariores.

## C A P. CI.

### Of Judgments and Execution.

**J**udicium is derived à Jure, & dicto, & est quasi Juris dictum, and therefore if the judgment be erroneous, both the judgment and execution thereupon, and all the former proceedings shall be reversed by writ of Error: but if the former proceeding and judgment be good, if the execution be erroneous, the execution shall only be reversed: and because the judgment is the guide and direction of the execution, we shall treat principally of the Judgment, and incidently of Execution.

Of Judgments, some be by the Common Law, and some by Statute Law, and some by Custom.

Of Judgments by the Common Law, some be in criminal causes, or Pleas of the Crown, concerning the life of man (whereof we are principally to treat) and of these some be expresse, and some implied. Other Judgments at the Common Law be in actions real and mixt, of which some be Judicia interlocutoria, and some ultima seu principalia: and again, de principalibus, quædam sunt finalia, & quædam non sunt finalia. Of Judgments by Statutes, some be in Criminal causes, and some in Common pleas: but Judgments by Custom are only in Common pleas.

6 El. Dier 230.  
See before in the  
chapter of Treason.

All Pleas of the Crown, concerning the life of man, are divided into Treason and Felony: and Treason into High Treason and Petit Treason, and Felony into all the several branches abovesaid. And as in the case of High Treason, (as it hath before appeared) some be far more horrible and odious then other, yet (one case excepted as before hath appeared) one and the same Judgment is given for all. So in cases of Petit Treason, one judgment is given in all, nay in all the several cases of Felony, though some be far more hainous then other, yet all being but Felony, one and the same judgment is given. See the judgment and forfeiture in cases of Treason, Felony, &c. in the several titles thereof, these we will add.

#### Judgment in High Treason.

Pl. Com 387 b.

See Stanford 182.  
d.e.

Lib. Int. Co. 361.

Et super hoc visis, & per curiam hic intellectis omnibus & singulis præmissis, \* consideratum est, quod prædictus R. usque furcas de T. 1 trahatur, & 2 ibidem suspendatur per collum, & vivus ad terram prosterminatur, & 3 interiora sua extra

19 H. 6. 47. Trahe, pende, & disclofe. Bract. li. 3. fo. 118. b. Crimen lese majest. ut si contra personam ipsius regis sit præsumptum, quod quidem crimen omnia alia crimina excedit quoad penam. Idem l. 3. fo. 104. b. maketh mention of execution, laqueo & securi, Parl. 21 R. 2. inter placita Coron. nu. 50.

ventrem



ventrem suum capiantur, ipsoque vivente comburantur, & 5 caput suum amputetur, quodque 6 corpus suum in quatuor partes dividatur, ac 7 quod caput & quarteria illa ponantur, ubi dominus Rex ea assignare vult.

Implied in this judgment is, First, the forfeiture of all his Mannors, Lands, Tenements and Hereditaments in fee-simple, or fee-tail, of whomsoever they be holden. Secondly, his wife to lose her Dower. Thirdly, he shall lose his children (for they become base and ignoble.) Fourthly, he shall lose his posterity, for his blood is stained and corrupted, and they cannot inherit to him, or any other Ancestor. Fifthly, all his goods and chattels, &c. and reason is, that his body, lands, goods, posterity, &c. should be torn, pulled asunder, and destroyed, that intended to tear and destroy the Majesty of government. And all these several punishments are found for treason in holy Scripture.

1 Reg. 2. 28. &c. Joab tractus, &c.

Esther 2. 22, 23. Bithan suspensus, &c.

Acts 1. 18. Judas suspensus crepuit medius, & diffusa sunt viscera ejus.

2 Sam. 18. 14, 15. Infixit tres lanceas in corde Absolon cum adhuc palpitaret, &c.

2 Sam. 20. 22. Abscissum caput Sheba filii Bichri.

2 Sam. 4. 11, 12. Interfecerunt Baanan & Rechab, & suspenderunt manus & pedes eorum super piscinam in Hebron.

Corruption of blood, and that the children of a Traitor should not inherit, appeareth also by holy Scripture.

Psal. 109. 9, 10, 11, 12, 13. Mutantes transferantur filii ejus, & mendicent, & ejiciantur de habitationibus suis, & diripient alieni labores ejus, & dispareat de terra memoria ejus.

*a* The Judgment of a woman for High Treason is to be drawn and burnt.

*b* Sir Andrew Harkley Earl of Carlisle, convicted, degraded and attainted of Treason.

*Judgment in Petit Treason, where he is convicted thereof by verdict or confession.*

Super hoc visis, &c. ut supra, Consideratum est, quod prædictus R. usque furcas de T. trahatur & ibidem suspendatur per Collum, quousque mortuus fuerit.

But a woman is to have judgment to be drawn and burnt as well in case of Petit Treason, as High Treason, and ought not to be beheaded or hanged. De morte mariti si compertum est uxorem, &c. igne Britanni interficiunt.

Bracton li. 3. fo. 105. a. Igne concremantur qui salutem dominorum suorum infidaverint, idem fo. 104. b.

*Judgment in felony, where he is convicted thereof by verdict or confession.*

Et super hoc visis, &c. ut supra, Consideratum est quod prædictus R. suspendatur per collum, quousque mortuus fuerit. Bracton lib. 3. fol. 104. b. speaketh, De laqueo.

And it is a maxim in Law, that execution must be according to the judgment, Et quæ in Curia nostra rite acta sunt, debet executioni demandari debent: \* and for express authority, non licet felonem pro feloniam decollare; and yet some examples are to the contrary.

True it is that the Lord of Hungerford of Heytsbury was in 32 H. 8. attainted of Huggery, and had judgment to be hanged by the neck, until he was dead; and yet on the Twenty eight day of July in the same year was beheaded at the Tower hill. But as true it is, that Thomas Fines Lord Dacres of the South, in anno 33 H. 8. was attainted of murder, and had judgment to be hanged by the neck until he was dead, and according to the judgment was hanged at Tiborn the Twenty eight of June in the same year. And true it is that Edward Duke of Somerset was attainted of felony in anno 5 E. 6. and had judgment to be hanged by the neck until he was dead, and on the twenty se-

35 H. 8. Br. Forfeiture. 99.

Drawing.

Hanging.

Bowelling.

The heart, &c. while he lived.

Behead. d.

Quarters hanged up.

Damnata memoria.

*a* 25 E. 3. 42. b.

Coron. 130.

Erit. c. 8. f. 16. b. accord.

*b* Degradation.

Hil. 18 E. 2. Coram Rege Rot. 34.

35. Walsingham. p. 118.

19 H. 6. 47.

Com. Caesar. ante

Christum natum

1600 annis, what

the Judgment was

for Petit. Treason.

1 R. 3. f. 4. 25 E. 3.

42. 12 Ass. 30.

6 E. 4. a & b.

See the Preface to

the sixth part of

Reports, what the

Law was before

the Conquest.

An. Dom. 995. in

case of felony.

\* Pasch. 20 R. 2.

Coram Rege Rot. 2

Lincoln.

See before cap.

Murder.



cond of February in the same year was beheaded at Tower-hill. And as true it is, that 3 & 4 Ph. and Mar. the Lord Stourton was attainted of murder, and had judgment to be hanged by the neck, until he were dead, and according to the judgment, the first of March in the same year was hanged.

In case of High Treason, beheading is part of the judgment, and therefore the King may pardon all the rest saving beheading, as is usually done in case of Nobility. But if a man being attainted of felony, be beheaded, it is no execution of the judgment, because the judgment is, that he be hanged, until he be dead. In this case the judgment doth belong to the Judge, and he cannot alter it, the execution belongs to the Sheriff, &c. and he cannot alter it. And if the execution might be altered in this case from hanging to beheading, by the same reason it might be altered to burning, stoning to death, &c. To conclude this point, *Judicandum est legibus, non exemplis; and Judicium est Juris dictum, & Executio est executio Juris secundum judicium.*

The forfeiture in case of Petit Treason and felony (which is implied in the judgment) is all one, which you may read in the First part of the Institutes, Sect. 747.

Deut. 2. 13.  
Vide Hil. 1 H. 5.  
Rog. Actions case.

*Quando peccaverit homo, quod morte plectendus est, & adjudicatus morti, apensus fuerit in patibulo, non permanebit ejus Cadaver in ligno, sed in eadem die sepelietur.* And the reason that Divines yield hereof is, for that by the execution of the judgment by death, the Law is satisfied, and abhorreth cruelty, and in that case, *Mors dicitur ultimum supplicium.*

And herein this is observable, that in Treason and Felony, the judgment is only of the fatal and corporal punishment, and nothing of the forfeiture, which is implied, but in Common Pleas the judgments are more particular.

*Judgment in Appeal, when the Defendant joyning battail is vanquished in the field, &c.*

8 E. 3. Judgment  
225.

If the Defendant in Appeal be vanquished in the field, the Record reciteth the vanquishing in the field. *Ideo consideratum est quod sus. per coll. and so it is when the Defendant is vanquished and slain in the field, yet the judgment is ut supra.* Otherwise there should be no escape: see the Second part of the Institutes, W. 1. cap. 14.

*Judgment in Treason or Felony, wherein neither any corporal punishment or forfeiture is expressed.*

Regist. 164. b.  
Fecit feloniam  
pro qua utlagatus  
fuit.

19 H. 6 2. a.  
Error Fl. 26.  
28 E. 3. 91. a.  
6 H. 4. 6.  
9 H. 7. 19. b.

In case of Treason or Felony, if any person be outlawed, the judgment upon the Writ at the first County Court upon default of the party is, *Ideo, &c. per judicium Coronatoris Domini Regis comitatus prædicti utlagatus est.* Which Writ being duly returned of Record by the Sheriff, the party shall have the like corporal punishment, and shall lose and forfeit as much as if he had appeared, &c. and judgment had been given against him in case of Treason or Felony respectively. And note that in these words (*ideo utlagatur*) both the corporal punishments and forfeiture also are implied: and if the proceeding therein, or the judgment be erroneous, and upon his appearance upon the *Capias utlagatum*, if it appear to the Court (whereof any man, as *amicus Curie*, may inform the Court) that the party may either avoid the outlawry against him by writ of error, or by plea, the Court ought not to award execution against the party, but assign him or her counsel learned, and require him or her by their advice, either to bring a Writ of error or plead: but if the party refuse to bring his Writ of error or plead after convenient time be given, if the outlawry be erroneous and not void, the Court may award execution. And so it was resolved, *Termino Hil.*

Hil. 3 Jac. Coram  
Rege per Curiam.

*Auterfoits attaint  
de mesme le offence.*

Anno 3 Jacobi Regis, by the whole Court in the Kings Bench, and divers presidents thereof shewed in the Reigns of H. 6. E. 4. and one in the Reign of Queen Eliz. which we saw; for as long as the attainer by outlawry standeth in force, the party outlawed cannot be drawn in question by any new Indictment or appeal for the Treason, or Felony, for the which he was outlawed; for *Auterfoitz*

attaint



attaint for the same offence is a good plea to free him from answer in that cause, albeit the Record be erroneous. But if the Attainder or Outlawry be void against him, then may he be either arraigned upon the former Indictment, or appeal, or newly Indicted, &c. if there be cause. And therefore the Judges are to take due consideration of the whole Record of the Attainder or Outlawry, that they may be truly informed of the true state of the cause, before they award execution of death against him upon the outlawry. Read Bracton lib. 3. Tract. 2. cap. 14. and Britton cap. 13. fol. 20, 21. excellently treating hercof, and Fleta lib. 1. cap. 27.

Vide 6 E. 3. 55. in Ajel.  
12 E. 2. Esch. 14.  
19 E. 2. Cor. 387.

Pract. l. 2. f. 131.  
Britton f. 20, 21.  
Fleta l. 1. cap. 27.

And by the Common Law Auterfoitz attaint, &c. of the same felony was a good plea as well in an Indictment as in Appeal by the Common Law. See the Statute of 3 H. 7. cap. 1. concerning appeal of death: so as in an appeal of death, at the suit of the party, Auterfoitz attaint de mesme le mort, is no plea at this day, but in case of an Indictment of death at the suit of the King, Auterfoitz attaint de mesme le mort in appeal is a good plea. Auterfoitz attaint de murder is a good plea to an Indictment, &c. of Petit Treason of the same death, for in effect it hath the same judgment, and the self same forfeiture. So likewise if a man be attainted of manslaughter, it is a good bar to an Indictment of murder of the same death, &c. contra.

By the Common Law if a man were attainted of a felony done by him, and admitting he were after pardoned, he cannot at the suit of the King be impeached for any felony whatsoever before his said Attainder by him committed, for by the Attainder he was mort in Ley; and in that case he had the judgment due for felony, viz. *Sci. per coll.* But the party may have his Appeal of Robbery, for a robbery done before the felony, whereof he was attainted, because in the Appeal he is to have restitution of his goods, besides judgment of death. \* And if the party attainted of felony had committed High Treason before his Attainder, he shall answer to the Treason notwithstanding his Attainder of felony, because the King by the Treason was intitled to have the forfeiture of all his lands, of whomsoever they were holden. Also for High Treason there is another judgment, being an offence of an higher nature: but being attainted of felony, if he commit Treason afterwards, he shall answer thereunto, because it is of higher nature then the felony, but it shall not devert the right of Escheat, which lawfully was by the felony vested in the Lords, contrary to the opinion of Justice Stanford in that case, for the act and offence of the party shall not devert the lawful Escheat of the Lords: but if a man be attainted of Treason, he cannot be after attainted of a former Treason, *causa qua supra.*

*Auterfoitz attaint  
dum anter offence.*  
28 E. 3. 90. b.  
Dier 4 Eliz.  
Stones case.  
6 H. 4. 6. 10 H. 4.  
Coron. 237.  
6 E. 3. Cor. 394.  
22 E. 3. Cor. 471.  
Stanf. f. 107, 108.  
See 44 E. 3. 44.  
7 H. 4. 31. 4 E. 4. 11  
\* 1 H. 6. fol. 5.  
Rot. Parl. 3 R. 2.  
nu. 18. Jo. Impe-  
rials case.

Where a little before it is said, that a felon by his Attainder is mort in Ley, it is to be understood of such former offences as require *poenam mortis*: for notwithstanding the Attainder, his body remains subject to arrests and execution for debts, &c. Vide hic paulo post, Trussells and Prestals case in margine. Albeit for felony a man be adjudged to his penance, Pain fort & dure, yet he may be impeached for any former felony, because the judgment is not given for the felony, but for his contumacy.

Dier 14 El. 308.  
Cobhams case.

If a man be attainted of Petit Larceny, he may be after attainted of felony, for the which he shall have judgment of death, because it is an higher offence, and is to have an other judgment.

### *Auterfoitz acquite, and the Judgment thereupon.*

But Auterfoitz acquite, must be of the same felony, and albeit he be acquit of the latter felony, yet may he be arraigned of any former felony: and so it is in case of treason, Auterfoitz acquite of treason must be of the same treason, for it acquiteth no other, because he ever remained a person able.

See Stanf. 105. a.  
& b. &c.

And albeit at this day in an appeal of death, Auterfoitz acquite, upon an Indictment of the same death is no bar, yet in an Indictment of death, auterfoitz attaint de mesme le mort in an Appeal is a good bar.

3 H. 7. cap. 1  
15 E. 3. Tit. Co-  
ron. 115. 15 Ayl.  
p. 7

In



Lib. 4. fol. 44. 45.  
And so it was ad-  
judged Mich. 33 &  
34 Eliz. coram  
Rege. in an Appeal  
of death between  
Katherine Wrote  
and Tho. Wiggles.  
Vid. 19 E. 3. Ear  
444.

V. 3 H. 4. f. 3. 11.

Lib. 4. fol. 45. 46.  
Holcrofts case.  
Second part of the  
Institutes, Art. su-  
per cart. cap. 3.  
Lib. Intr. Co. 53,  
54, &c.  
Lib. 4. fo. 40. We-  
therels case.  
Stanf. lib. 2. ca. 37.  
\* *Auter foits con-  
vict. d'un auter fe-  
lony.* 25 E. 3. ca. 5.  
pro Clero.

Vid. Pasc. 39 E. 3.  
Rot. 95. Scire fac.  
Dominis mediatis  
& immediatis.

Stanf. pl. cor. 18.  
k. 1.  
33 H. 8. cap. 20.

In an Indictment or Appeal of death, if it be found that he killed him in his own defence, he is acquitted of the felony for ever.

It appeareth in Vauxes case, that if a man be erroneously acquitted of felony by verdict and judgment thereupon given, yet if the Indictment, &c. be insufficient, he may be indicted again for the reasons & causes in that case reported, which you may read there at large, and need not here be repeated: And thereunto this we will add, that the reason, wherefore upon an erroneous judgment of condemnation, the party (as hath been said) is driven to his Writ of Error, and in the case of an erroneous judgment of acquittal, that no Writ of Error needeth to be brought by the King, but the offender may be newly indicted, &c. is this, that in the case of condemnation, the judgment is, *Quod suspendatur*, &c. which is the judgment of Law due for the offence, and ought to be given therefore, and can have no other intendment: but in the case of Acquittal the judgment is *Quod eat sine die*, &c. which may be given as well for the insufficiency of the Indictment, as for the parties innocency, or not guiltiness of the offence. And the Judges of the cause ought before judgment to look into the whole Record, and upon due consideration thereof to cause it to be entered, *Ideo consideratum est quod eat sine die*; which upon that report, and this addition implied therein, we hold may satisfy the studious reader.

### *Auter foits convict de mesme le felony devant judgment.*

For this division, see Holcrofts case before in the Chapter of Murder, and Lib. 4. fo. 45, 46. where the Statute of 3 H. 7. cap. 1. is well expounded: and the 2. part of the Institutes, Artic. super Cart. cap. 3. & Lib. Intr. Co. fo. 53, 54, &c. and Lib. 4. fo. 40. Wetherels case. And Stanford Lib. 2. cap. 37. in pl. coron.

\* Before the Statutes of 8 El. c. 4. and 18 El. c. 6. If a man had committed divers felonies, if he had been indicted of the last, and had benefit of his Clergy, he could not have been impeached for any of the former felonies, albeit for the same he could not have had his Clergy: by that Act it is provided, that notwithstanding the allowance of such Clergy, he may be impeached for any former offence, for which he could not have had his Clergy.

### *Judgment to reverse an outlawry for treason or felony.*

The judgment to reverse an outlawry of A. B. in case of treason or felony in a Writ of Error is: *Ideo consideratum est quod utlagaria prædicta ob errorem prædictum & alios in recordo & processu prædicti comperiti, revocetur, annullentur, & penitus pro nullo habeatur, & quod prædictus A. B. ad communem legem & omnia quæ occasione utlagariæ prædictæ amisit, restituatur, &c. & quod ipse eat sine dine.*

If the Outlawry be avoided by plea, then the judgment is, *Ideo consideratum est quod prædictus A. B. de utlagaria prædicta exoneretur, & quod ipse ad communem legem, & omnia, quæ occasione utlagariæ prædictæ amisit, restituatur, & ea occasione non molestetur in aliquo, nec gravetur, sed sit, & eat inde quietus.*

If A. B. be indicted of treason or felony in the Kings Bench, or if he be indicted before Commissioners of Oyer and Terminer, or any other, and the Indictment of treason or felony is removed into the Kings Bench: and by Process out of the Kings Bench he is erroneously outlawed and so returned, a Writ of Error may be brought in the Kings Bench for reversal thereof.

And where it is holden by some, that if any person be attainted of High Treason by the Common Law, that no Writ of Error should be brought for the reversal of that attainder by reason of these words of the Statute of 33 H. 8. cap. 20. viz. And if any person or persons shall be attainted of High Treason by the course of the Common Law, &c. that every such attainder by the Common Law shall be of as good strength, value, force, and effect, as if it had been done by authority of Parliament. But the contrary hereof was resolved at a Parliament holden Anno 28 Eliz. that a Writ of Error should be maintained for the reversal of erroneous attainders of High Treason by the Common Law: for that Statute of



33 H. 8. is to be intended of lawful attainders by the due course of the Common Law, and not of erroneous or void attainders. And thereupon at that Parliament holden anno 28 Eliz. an Act was made, That no Record of attainder of any person or persons, of or for any High Treason, where the party so attainted \* is or hath been executed for the same Treason, shall be, &c. in any wise hereafter reversed, undone, avoided, or impeached by any plea, or for any error whatsoever.

\* And albeit Judgment be given against a man in case of Treason or Felony, yet his body is not forfeited to the King, but until execution remains his own. And therefore before execution, *a* if he be slain without authority of Law, his wife shall have an Appeal; for notwithstanding the attainder he remained her husband. And after such attainder his body may, at the suit of a Subject, be taken in execution upon a Judgment or Sentence, &c. And he may be executed for Treason or Felony, notwithstanding such execution had against him. And in an Action of Debt, or other Action brought against a person attainted, he cannot plead the attainder, and demand judgment, if during the attainder he shall be put to answer: *b* for upon consideration had of the books in 11 Aff. 27. 2 E. 4. 1. 4 E. 4. 8 6 E. 4. 4. 6 H. 4. 6. 8 Eliz. Dier 245, &c. *c* it was adjudged that the person attainted should not plead the said plea, but should be put to answer. And there is a great diversity between an attainder of Treason or Felony, and an entry into Religion; for he that is attainted of Treason or Felony hath capacity, and *d* may purchase lands to him and his heirs, *e* but so cannot he that is entered into Religion. And it is against a rule in Law, that any man of full age should be received in any Plea by the Law to disable his own person, *g* or take advantage of his own wrong. And if the person attainted be beaten or maimed, or a woman attainted be ravished, after pardon, they shall have an Action of battery, Appeal of mayne, or Rape. See Lib. Intr. Co. 247. 248.

*b* In ancient time a man indicted or appealed of life or member, or imprisoned, &c. should not be compelled to answer at other mens suits, but (as before it appeared) these opinions have been justly changed.

*i* There was a notable case adjudged in the Kings Bench Mich. 26 & 27 Eliz. wherewith I was well acquainted concerning the matters of outlawry and errors before spoken of, which was in effect as followeth.

Ninianus Menvile nuper de Stedwith in Com' Dunelm' at Anno 1 & 2 Ph. & Mar. was indicted in the Kings Bench of High Treason, and upon Proses he was outlawed, and so returned, and his daughter and heir brought a Writ of Error in the Kings Bench, wherein two errors were assigned. 1. That before the Erigent the 2. Capias with a Proclamation was awarded to the Sheriff of the County Palatine of Durham, where it ought to have been directed to the Chancellor of that County. *k* For that point 30 H. 6. 6. 36 H. 6. 35. 1 E. 4. 10. the book of Entries Rast. fo. 52. Stanf. pl. cor. 68, 69. & 70. Vid. 19 H. 6. 2. 31 H. 6. 11. but the Court gave no opinion concerning this Error. The other Error that was assigned, was, that the Sheriff returned upon the said Capias, that at his Court holden at the City of Durham the eighth day of July, in the second and third years of the reign of King Philip and Queen Mary he made the Proclamation, &c. and there were no such years: for Queen Mary began her Reign the 6 day of July, and the 25 day of July in the 2 year of her Reign she married King Philip: so as between the 2 day of July, and the 25 day of July, the Queen wrote two years before the King. And therefore there could be no such years as 8 July Anno 2 & 3. but should have been 2 & 4. And so was the clear opinion of the whole Court. But then it was objected, that by the said Act of 35 H. 8. and Stanfords opinion thereupon, that the attainder by outlawry being an attainder by the Common Law, it could not be reversed by Writ of Error, for that the said Act of 35 H. 8. was to be intended of lawful attainders: And after great deliberation the outlawry of Treason was reversed. And, I take it, it shall not be altogether impertinent, sure I am it shall not be unprofitable, to report the consequent of this reversal. In the next Term, sc. Term. Hil. anno 27 Eliz. for that Queen Eliz. had the Lands whereof the said Ninian was seised in fee: his wife

\* Nota, this Act extends only to attainders of treasons before the Act of 28 El where the party hath been executed, and not to attainders of treasons afterwards.

\* What interest the King hath in the body of the attainted before execution.

*a* 35 H. 6. 63.

*b* See Britton, ca. 122. Fleta lib. 6. cap. 6, 7.

*c* Mich 38 & 39 Eliz. in cōi bincō Int. Banister & Trussell. attainr de felony.

Vide Mich. 33 & 34 Eliz. coram Rege Ror 532. Int. Ognel & Trussell.

Mic 32 Eliz. inter Wade p aindiff, & Prestal defendant arraint de haut treason, corā R. ge. Vid. sup. *d* See the first part of the Institutes, Sect. 1.

*e* Car si home purchase.

*f* Ibid Sect. 159, 200. more in ley.

*g* First part Inst. Sect. 405.

*h* 45 E. 3. 5. a.

18 E. 4. 25.

15 E. 4. 5. a. & c. Lic.

*b* Brit. ca. 122. a.

*c* Encusment de crime.

Fleta lib. 6. c. 6, 7. &c.

*i* Mic 26 & 27 El.

Ninian Melvins

ca. 2 in the Kings

Bench h. 1. Br. de

Errore.

*k* See the Stat. of

8 h. 6. cap. 10.

Hil. 27 Eliz. in Hilacis Cancellariis.



by petition of right, which comprehended the title of the wife, and the title of the Queen, claimed her dower, which in effect was this; That her husband was seised of certain lands in fee, and took her to Wife: and before his Treason committed Anno 1 Maria levied a Fine with Proclamation to another, whose estate the Queen had by lawful conveyance therein expressed; and that afterward her said husband was attainted of High Treason by outlawry, ut supra, and died in anno 4 Eliz. which outlawry was the last Term reversed in a Writ of Error, as is abovesaid: which Petition being indorsed by the Queen, Soit droit fait al pertie, and delivered into the Chancery, Sir Thomas Bromley a man of great gravity and judgment in Law, then being Lord Chancellor of England, by the advice of all the Judges resolved these Four points following. First, that the petitioner need not to have any office to find her title, because her title standeth with the title of the Queen, and the Queen is not intitled by office (which she might traverse, or confesse and avoid) but by conveyance, which she affirmeth. Secondly, that a Fine with Proclamations, and five years past after the death of the Husband doth bar the Wife of her dower, and that the counsellor shall take advantage thereof, and of the attainder also. Thirdly, that albeit five years and many more in this case were past since the death of her husband, yet the said fine with Proclamations did not bar her; because as long as the said attainder of Treason stood in force, she was barred of her dower, and could not have any remedy, or pursue her title, until the outlawry were reversed, and then her title of dower did first grow due unto her, and therefore she might within five years after the reversal of the said outlawry, pursue her title by the express words of the saving of the Act of 4 H. 7. Fourthly, albeit an attainder reversed by a Writ of Error, is as concerning restitution to the party by relation from the beginning become of no force, and the Record so annihilated thereby, as Nul tiel Record may be pleaded thereunto: yet this relation shall never work a bar, and consequently a wrong to a stranger, but that the truth of the matter may be shewed, viz. the Record, and the reversal of the same: and the rather (as some said) because the Wife could not have any Writ of Error to reverse the outlawry, so as she had no mean to pursue her right so long as the outlawry remained in force, which it did, until it was reversed by error. But admit the Wife had been (in a remote degree of consanguinity) heir to her husband, so as she might within five years after the death of her husband have had her Writ of Error after the death of her husband to reverse the outlawry, and to enable her self to pursue for her dower, and reverse the outlawry within the five years: I hold in this case that she shall have five years after this reversal, and that within the said saving of the Statute of 4 H. 7. for then did her title of dower (as hath been said) first grow unto her, \* and it was not in her power to reverse the outlawry when she would. And in this Term of St. Hillary, Popham Attorney General, according to the said resolution of the Lord Chancellor and Judges, confessed the Petition to be true; and thereupon Judgment was given, that she should be indowed, and was indowed accordingly.

Vide Lib. 2. fo. 93.  
Binghams case.  
See the first part  
of the Institutes.  
Sect 55.

4 H. 7. cap. 24. the  
first saving.

a 26 E. 3. 75.

4 H. 7. fo 22. &  
11, 12.

38 H. 6. 4 & 12.

21 E. 4. 23. Dier  
29.

H. 8. fol. 32. pl 8.  
idem.

6 Eliz. 228. pl. 45.

3 Eliz. fo. 188.  
pl. 8. a.

Lib 8. fo. 42, 43. b.

Dr. Druryes case.

b 34 H. 6. fo. 2.

\* Nota.

c 26 H. 8. cap. 13.

5 E. 6. cap. 11.

These Statutes not  
only extend to all  
Treasons by the  
Statute of 25 E. 3.  
by the Common  
Law, but by any  
other Statute.

Vi. Dier 12 Eliz.  
fo. 287. accord.  
First part of the  
Institutes, Sect.

479.

c By the Statute of 26 H. 8. and 5 E. 6. it is enacted, that all Proces of outlawry against any offenders in Treason, being out of the Realm, or beyond the Seas, at the time of the outlawry pronounced, shall be as good and effectual as if the offenders had been within the Realm at the time of the outlawry pronounced. See the said Statute of 5 E. 6. cap. 11. that, if the party outlawed shall within one year after the outlawry pronounced, yield himself to the Chief Justice of England, and traverse the said Indictment, &c. and thereupon be found not guilty by verdict, he shall be clearly discharged of the said outlawry.

*Judgment in case of Abjuration for Felony, whiles it was of force.*

After the flying of a felon for any kind of felony whatsoever, Sacrilege excepted, but in case of High Treason or Petit Treason a man could never abjure, because the Coroner is not allowed by Law to be a Judge of those heinous crimes) into a Church, &c. for safeguard of his life: and upon his prayer of a Coroner,



Coroner, *a* and his voluntary and particular confession of the Felony before the Coroner, naming the certain time, the judgment was, Idem A. petit de præfato Coronatore regnum domini Regis Angliæ abjurare: Super quo tradito *b* ei libro præfatus coronatorem, idem A. regnum prædictum coram præfato coronatore prædictum die &c. in ecclesia prædicta abjuravit, in idem regnum nunquam rediturus absque speciali licentia, & reconciliatione regis Angliæ, & assignatus est eidem A. pro transitu suo extra regnum prædictum Portus de Yarmouth *c* Cruce in manu sua dextra posita, prout lex Angliæ est & consuetudo. Nothing is expressed in this Judgment but abjuravit regnum, but therein is implied, that all his Lands which he had at the time of the Felony committed, *d* (and therefore the time of the Felony was set down in his confession particularly) or at any time after, escheated to the Lords of the fees, and forfeited to the King all his goods which he had at the time of his attainder, *e* the time whereof also was expressed certainly, and his blood corrupted, and other incidents, as in other attainders of Felony, only by his voluntary and particular confession. In this case for the offence of Felony, he saved his life so long as he kept himself extra regnum, but if he returned, then under this word [abjuravit] is implied *Sus. per collum. Mich. 1 R.2. Rot.1. Bedf. rediit & suspend.* See the first part of the Institutes, Sect. 200. fo. 132, 133. and the Second part of the Institutes, W.1. cap. 20. verbo, [Forejure le Realm.] Artic. Cler. cap. 10. & 15. And the Law was so favourable for the preservation of Sanctuaries, that if the Felon had been in prison for the Felony, and before attainder or conviction, *g* had escaped and taken Sanctuary in Church or Church-yard, &c. and the Gaolers or others had pursued him, and brought him again to prison, upon his arraignment he might have pleaded the same, and should have been restored again to the Sanctuary: See more concerning Abjuration, *Mic. 9 E.3. Coram Rege Rot. 84. extra legem positus, &c.* To conclude this Judgment of Abjuration, we take it, that for Felony *h* Abjuration is utterly taken away. For abjuration of Recusants and of Hunters in Parks, &c. we have given but a light touch, because they belong not to our treatise of the Pleas of the Crown, nor have we spoken any thing of abjuration in case of Heresie, quia spectat ad aliud forum.

Thus have we spoken of Judgments and Attainders in cases of High Treason, upon verdict, confession, or nihil dicit, and by outlawry: in case of Petit Treason upon verdict, confession, or by outlawry: and in case of Felony, upon verdict, or confession, or by outlawry, or by abjuration, for none can be attainted of Petit Treason or Felony upon a nihil dicit, or refusal to answer, but in that the Delinquent is to have his punishment of Peine fort & dure, which next followeth to be handled.

*1 E. 3. 17. lib. Intr. Rast. fo. 246. b. pl. 6. g Lib. Intr. Rast. 322. b. Sanct. 2. Hil. 43 E. 3. Rot. 115. Buck. William Attewels case. h For all Sanctuaries are taken away by 21 Jac. ca. 28. Note a Sanctuary in the Statute of 1 H. 7. cap. 13. Joshua 20. 8. Sec 2. part of the Institutes, Glouc. cap.*

### *Peyne fort & dure.*

In case of Petit Treason or Felony, *i* when the offender standeth mute, and refuseth to be tried by the Common Law of the land; See Peine fort and dure in the Second part of the Institutes, W.1. cap. 2. but this holdeth but in case of Petit treason and Felony. In case of High treason, upon standing mute, or a nihil dicit, the judgment aforesaid shall be given against him, as if he had been convicted.

And in doing of execution, both in Treason and Felony, two things are to be observed. First, that it be done by the right Officer, as the Sheriff or Marshal, for if any other execute the offender, it is Felony. Secondly, execution must be made by him that is the right Officer according to the judgment: For example, *k* where the judgment is, that the offender shall be hanged, he cannot behead him, &c. as before is said. Bracton lib. 3. fo. 104. b. Non alio modo puniatur quis, quam se habeat condemnatio. P. 20 R. 2. Coram Rege Rot. 58. Lincoln. Non licet felonem pro feloniam decollari.

rily above the number of 36. viz. three whole Juries. *k 35 H. 6. 57, 58. Vide li. 9. fo. 124. the Lord*

*a 6 E. 3. 52. in Ajell Malloms case. 12 E. 2. esche. 14. Tr. 21 E. 1. Coram Rege 42. simile. b Hereupon it was called abjuration; because he was sworn to depart the Kingdom. See the Oath. Ver. Mag. Carr. 1 part f. 167, 168. c That he might be known to be an abjured person, and not be let, or hindered in his journey. Et crux fuit signum servata vita per ecclesiam, and is sometime called vexillum Sanctæ Ecclesiæ. Hil. 26 E. 3. Coram Rege Rot. 20. d Pl. Com. f. 262. a. in Dame Hales case. Register fo. 164. b. Fecit feloniam pro qua regnum nostrum abjuravit. e Stanf. Pl. Cor. 117. E. 6 E. 3. 55. in Ajell Malloms case. 12 E. 2. Esche. 14. 6 E. 2. Forf. Br. 121 6 H. 4. 6. f Forejure in French is taken for abjure, in Latin abjurare. i First part of the Instit. Sect. 545. verb. Attain. 2. part of the Instit. W. 1 c. 12. Dier 3 El. 205. a. 13 El. 300. b See before in the chap. of Treason. See after in the next chapter of Forfeiture fo. when the party arraigned challengeth peremptorily above the number of 36. viz. three whole Juries. k 35 H. 6. 57, 58. Vide li. 9. fo. 124. the Lord*



*Judgment in case of Petit larceny.*

Bracton lib. 3.  
fo. 151. b.  
Britton fo. 24. a.  
Fleta li. 1. ca. 36.  
Bracton lib. 3. fo.  
104. b. maketh  
mention of pu-  
nishment, verberi-  
bus & virgis.  
\* 18 A. 1. p. 13.  
8 E. Cor. 130.  
41 E. 3. Cor. 451.

The judgment herein was in ancient time referred to the discretion of the Judge, as in Bractons time, Per fustigationem, & sic castigatus dimittitur. In Brittons time, sometime by the Pillory, sometime by the loss of the ear: and Fleta saith, Est enim furtum de re magna & parva, pro minimo tamen latrocinio 12 denariorum & infra, nullus morti condemnatur; pro hujusmodi modicis delictis inventa fuerunt judicialia Pilloria, & deformitates corporum, ut scissio auricularum.

\* But in and since the reign of E. 3. no person lost any member for Petit larceny, but were sometime punished by imprisonment, and sometime by other penance, as whipping, &c. If the Delinquent lieth for Petit larceny, and so be found by the Jury, he forfeiteth his goods.

*Judgment in case of misprison of High Treason.*

That the offender by the Common Law shall for this concealment forfeit all his goods, and the profits of his Lands during his life, and suffer imprisonment during his life. Vide Stanford Pl. Coron. fo. 38. 1 & 2 Mar. cap. 10.

Tr. 4 E. 4. Coram  
Rege Rot. 3.  
19 E. 3. Judgment  
174.  
39 Aff. p. 1.  
41 Aff. 25.  
22 E. 3. 13. a. 41 E. 3.  
Co. on. 280. 42 Aff.  
18. Stanf Pl. Cor.  
38. c. 3 Eliz. Dier  
183.

*Judgment for Striking in Westminster-Hall, &c. sitting the Courts.*

That the offender shall be imprisoned during his life, forfeit all his lands, tenements, goods and chattels, & quod manus sua dextra amputaretur (apud talem locum: ) and this Judgment is given by the Common Law. Bracton lib. 3. 104. b. Poenarum quædam adimunt membrum, & corporis coercionem, sc. imprisonment, vel ad tempus, vel imperpetuum.

*Judgment for striking and drawing blood in the Kings Court, &c.*

The offender shall have his right hand stricken off, be imprisoned during his life, and be fined and ransomed at the Kings will: and this Judgment is given by the Statute of 33 H. 8. cap. 12. 33 H. 8. Paine Br. 16.

1 & 2 Ph. & Mar.  
ca. 3. obtruncatio  
manus dextræ.

We cannot omit to touch by the way an Act made in 1 & 2 Ph. & Mar. intituled, an Act against seditious words and rumours; by a branch of which Act, he that should set forth any book, rhyme, ballad, letter or writing containing any false matter, clause or sentence of slander or reproach, and dishonour of the King and Queens Majesty, or either of them, &c. should have his or their right hand stricken off; which Act being but a Probationer, at the Parliament in 4 & 5 Ph. & Mar. was continued until the end of the next Parliament. And by the Act of 1 Eliz. (which was the next Parliament) the said Act of 1 & 2 Ph. & Mar. was enacted to extend to Queen Elizabeth, and to the heirs of her body Kings and Queens of this Realm, so as by the demise of Queen Eliz. that Act hath lost his force, as it was well worthy, being a dangerous Act, as some had felt in anno 23 Eliz.

1 El. c. 6.

*Judgment in a Premunire at the suit of the King.*

See the 1. part of  
the Instit. §. 159.

If the Defendant be in prison, Quod prædictus R. sit extra protectionem domini Regis, & terras, & tenementa, bona & catalla domino Regi forisfaciat, & quod corpus ejus remaneat in prisona ad voluntatem Regis, as in the book of Entries. Rast. Judgment 465. And this Judgment is given by the Statutes of 25 E. 3. ca. 22. 25 E. 3. de Provisoribus, 27 E. 3. ca. 1. 16 R. 2. ca. 5. and if he be not in prison, Quod præd. R. sit extra protectionem domini regis, & terras & tenementa, bona & catalla domino regi forisfaciat, & quod capiatur.

44 E. 3. 36.

*Judgment in case of Thefbote.*

5 E. 3. Cor. 353.  
29 E. 3. 9.  
27 Aff. 69.  
42 Aff. p. 5.  
Stanf. fo. 40. b.

That the offender be fined; and it is to be observed that whensoever the Delinquent, or Defendant is to be fined, the Judgment is quod capiatur, that is, to be imprisoned until he doth pay his fine: but when the Defendant is to be amerced, and not fined, then the Defendant is in misericordia, whereof you may



may read at large, Lib. 8. fol. 38, 39. &c. & 59, 60. & 120. Lib. 11. 43, 44.

*Pillory.*

Pillory is a French word, and it is derived of the French word *Pilastre* a Pillar, columna. Et est lignea columna, in qua collum insertum premitur, and thereupon in Law it is called *Collistrigium*, quia in eo collum hominum constringitur: this punishment is very ancient, for the Saxons called it *Healt-rauz*, so called for straining the neck. Britton fo. 24. saith, that those that have been adjudged to the Pillory, or Tumbrel, are so infamous, Come ilz ne sont receivables al serement faire in juries, enquets ou en testimoignants; and herewith agreeth Bracton. Vet. Mag. Cart. 2. parte fol. 23, 24. 45.

Saxonice *Heils-fang*, or *Hals-farg*, *Hals* collum *farg* pressio. It is also called an *amerce*ment for commutation of such a punishment. 51 H. 3. Judicium Collistrigii. Et Pillorii, Vet. N. B. 1.

parte. 116, 117. Britton fo. 24. Mirror cap. 4. §. De paines en divers manners. Kelway Temps li. 2. cap 8. By the Statute of 51 H. 3. & 31 E. 1. Vet. Mag. Cart. 2. parte. fo. 23, 24. 45.

E. 3. 145. b. Fleta

*Tumbrel.*

Tumbrel is a word in use at this day for a Dungecart. Bracton calleth it Tymboralem.

Infligitur poena corporalis; sc. pilloralis vel tumberalis cum infamia. Secundum Regni statuta, It is called tumbrellum, there being no proper Latin word for a Dungecart.

Furce Pillot & Tumbrel append al View de Frankpledge. And every one that hath a Lett or Markat ought to have a Pillory and Tumbrel &c. to punish offenders, as Brewers, Bakers, Forestallers, &c.

Bract. lib. 3. fo 104 b. 129. b. 151. b. 158 Mirror ubi supra, Temps E. 3. Kelway 139, 140 b. 149. b. 152. Fleta l. 2. c. 11. §. Item si d' nus Lib. Intr. Raft. 494 a. in Quo war. 7 E. 2. in eodem 260. b

*Trebuchet.*

Or castigatory, named in the Statute of 51 H. 3. signifieth a Cucking stool, and Trebuchet properly is a pitfall or downfall, and in Law signifieth a stool, that falleth down into a pit of water, for the punishment of the party in it. And Cuck, or Guck in the Saxon tongue, signifieth to scould or brawl, (taken from the Cuckhaw, or Guckhaw, a bird, qui odiose jurgat & rixatur) and linge in that language [water] because she was for her punishment scowled in the water; and others fetch it from Cuckquean, i. pellex.

Now for that the Judgment to the Pillory or Tumbrel (as it hath appeared before) doth make the Delinquent infamous, and that the rule of Law is, Judicium de majore poena quam quod legibus statutum est non infamum facit, sed per breve de errore adnullare potest, and again, poena gravior ultra legem posita estimationem conservat, that the Justices of Assise, Oier and Terminer, Gaol-delivery, and Justices of Peace, would be well advised before they give judgment of any person to the Pillory or Tumbrel, unless they have good warrant for their judgment therein. Fine and imprisonment for offences finable by the Justices above said, is a fair and sure way.

Stat. de 51 H. 3. ubi supra. Vet. Mag. Cart. part 2. fo. 44 45. Stat. de pane & cervisia.

And it is to be observed that those kinds of punishments of Pillory, &c. have been given by Acts of Parliament in cases of enormous and exorbitant offences, as by the Statutes of 51 H. 3. 31 E. 1. De pistoriis, &c. 31 E. 1. De forestallariis. 11 H. 7. c. 4. 33 H. 8. c. 1. 1 & 2 Ph. & Mar. cap. 10. 2 E. 6. c. 15. 5 E. 6. c. 6. & 14. 7 E. 6. c. 7. El. c. 7. 5 El. c. 9. 16. 18 El. cap. And therefore the safest way for them is to follow those Acts of Parliament in cases provided by the same: But of the Court of the Kings Bench, (the highest Court of ordinary Justice) in respect of the multitude of the judicial presidents (which we have seen) we say with the Poet, Huic nec metas rerum, nec tempora pone, (for judicial presidents of grave and reverend Judges, are good guides to direct men in the right way) we will enumerate some of them.

Judgments to be given by Justices of Assise, of Oier and Terminer, of Gaol-delivery, of Justices of Peace.

21 E. 1. Coram Reg. Rot. 2 Eustachius de Porles Castell, for slandering of Justice Berisford, imprisonment in the Tower, ad voluntatem Regis.

Vet. Mag. Cart. parte 2. fo. 24, 25.

Mich. 33 E. 1. Coram Rege, Rot. 75. William Brewces case, for slandering, &c. of Roger

Exemplary punishments adjudged in the Kings Bench



Roger Hegham Justice. Tr. 3 E. 2. Int. Mem. Scaccarii for standing of Foxley, a Baron of the Exchequer. Mich. 18 E. 3. coram Rege. Rot. 151. for slandering of the Justices of the Kings Bench, by a Letter of Tho. Bulbroke a Clerk of the same Court. 30 Ass. p. 5. 19. 19 Ass. 1. Pasch. 10 E. 3. Rot. 87. Tho. Twyce Hazarder cois ludens ad falsos talos adjudicatur quod per sex dies in diversis locis ponatur super collistrigium. Mich. 10 E. 3. Rot. 92. coram Rege, Adam de Ravenworth. Mich. 21 E. 3. coram Rege, Warw. Verss. Attornat apparent sine Warranto. Hil. 25 E. 3. coram Rege, Rot. 13. versus Robert Hadham Commissionarium pro venditione Bladi in garbis adjudicatur prisonæ, & quod ab omni officio Domini Regis amoveatur & finem faciat. Trin. 2 H. 4. coram Rege, Rot. 10. Suffex. Mich. 4 & 5 Eliz. coram Rege, Hugh Bakers case, for a Libel against certain of the inhabitants of Chersie, punished by imprisonment, Pillory, and good behaviour, &c.

Ancient rules of Law in corporal punishments.

Bracton lib. 3. f. 105. a  
Ibid.

See the fourth part of the Institutes, Cap. Star-Chamber, for punishment by Pillory &c. for enormous and exorbitant offences, which require more exemplary punishment than an ordinary course of the Laws of the Realm do inflict. Nobiles magis plectuntur pecunia, plebei vero in corpore; which is observable in all the said Statutes. And Bracton saith, Quælibet poena corporalis, quamviminima, major est qualibet poena pecuniari. Carcer ad continendos, non ad puniendos haberi debet, &c. Poenæ potius molliendæ, exasperandæ sunt. Respicendum est judicanti, ne quid aut durius, aut remissius constituatur, quam causa deposcit; nec enim aut severitatis, aut clementiæ gloria affectanda est. Aliter puniuntur ex eisdem factionibus servi, quam liberi: & aliter qui quidem aliquid in Dominum, parentemve commiserit, quam in extraneum; in magistratum, quam in privatum.

### Death of a man per infortunium.

Matlbr. cap. 25.  
Bracton ubi sup.

Judgment implied, or in Law.  
24 H. 8. cap. 5.

Of this mischance there is no express judgment to be given, but the offender is to sue out his pardon of course, as it appeareth in the second part of the Institutes, Glouc. cap. 9. And hereof Bracton saith, Casu, cum per infortunium, ut si aliquis venando per telum in feram missum, hominem interfecerit, & similia perpetraverit, &c. But albeit there be no express judgment given upon such a verdict, yet the Law giveth a judgment thereupon, viz. that he shall forfeit all his goods and chattels, debts and duties whatsoever, as in the second part of the Institutes, ubi supra, it appeareth.

### Of death of a man, se defendendo.

Judgment implied or in Law.  
See ca 7. fol. 95. b.  
43 Ass. p. 31.  
Rot. Parl. 3 R. 2.  
nu. 18. John Imperials case.

Upon such a verdict given the Court giveth no express judgment, for he is also to be pardoned of course: but the Law hath given a judgment, that he shall forfeit all his goods and chattels, debts and duties, as in the second part of the Institutes, ubi supra, it appeareth. But the Jury cannot find that the party killed him generally se defendendo: but they ought to find the case specially, so as the Court may judge whether in Law it be se defendendo, or no. See Stanf. fo. 15.

a 3 E. 3. cor 305.  
b 3 E. 3. cor. 330. }  
26 Ass. 23. Exod.  
22. Si estringens vir domum five suffodiens fuerit inventus, & accepto vulnere mortuus fuerit, percussor non erit reus sanguinis.  
c Nota, declared, &c. and so was the Common Law, as by the Books aforesaid it appeareth.

### Of the death of a man that offereth to rob, &c.

If it be found by verdict, that the party (indicted or appealed for the death of A.) attempted to have murdered or a robbed him in or nigh any common Highway, Cartway, Horseway, or Footway, or in his mansion or dwelling house; or for the killing of him which attempteth Burglary to break his dwelling house in the night; the judgment upon such a verdict shall be, that he shall be acquitted of the death of such a person paying his fees, and he shall forfeit nothing. And so it is declared and enacted by the Statute of 24 H. 8.

And if all the circumstances be proved to the Jury in evidence required by this Act in these cases, the Jury may find a general verdict of not guilty. And where it is rehearsed in the said Act of 24 H. 8. that before that Act it was a question and ambiguity whether evil disposed persons so attempting, ut supra, should forfeit their goods and chattels: the reason of that question and ambiguity was in none



none of those cases mentioned in that Act, no Robbery, Murder, or Burglary was done, but an attempt only to do it. But it was no question at the Common Law, that if a Robbery, Murder, Burglary, or other felony was done, and pursuit made after the offender, who either by resistance or flight could not be apprehended without killing of him by inevitable necessity, the party so pursuing and killing should not forfeit his goods or chattels; for in those cases every man may arrest the felon by a warrant in Law. But there is a diversity between a Warrant in deed, and a Warrant in Law, in this, that if a man be indicted of Murder, Robbery, Burglary, or other felony, and the Sheriff by virtue of a Capias offer to arrest him, and he resisteth, and fly, ut supra, the Sheriff may kill him, if otherwise he cannot arrest him, although in truth the party be not guilty, nor any felony done. But in the case of the abovesaid Warrant in Law, there must be a felony done, and this diversity appeareth in our Books; \* and so it is, if after arrest for felony the party arrested resisteth or flieth, and in pursuit is slain by inevitable necessity, they so killing him forfeit nothing.

An Approver that kills the party accused in battel, or a Champion that killeth the other Champion in a Writ of Right, or the plaintiff or defendant in an appeal that killeth the other in duello, according to the Common Law, or in combat awarded by the Constable and Marshal in the Court of Chivalry, the party killing shall forfeit nothing; for these combats or duels are such trials as the Law appoints in such cases. For, saith Fleta, Duellum est singularis pugna inter duos ad probandum veritatem litis; & qui vicerit, probasse intelligitur: & quamvis judicium Dei expectatur ibid. quicumque tamen monomachiam, i. singularem pugnam sponte susceperit, aut obtulerit, homicida est, & mortale contrahit peccatum. But before we leave these Champions, it is to be observed that whosoever taketh upon him to be a Champion for another (the form and oath whereof you may read in the Second part of the Institutes, W. 1. cap. 40. & Glanvil lib. 2. cap. 3.) if he become recreant, that is, a crying Coward or Craven, he shall for his perjury lose liberam legem. Craven is derived of the Greek word κρᾶνν, à vociferatione: others nearer home, of crying and craving of mercy and forgiveness. And recreantia is derived of the French word recreance, of giving back or cowardize. And sometime it is called creantia e per antiphrasin, because he that useth it is not faithful, but breaketh his oath. And so if the Appellant join battel, and cry Craven, he shall also lose liberam legem for the cause aforesaid, but if the Appellee cry Craven he shall be hanged: \* but if they combat until night come, and stars appear, the defendant in the appeal goeth quit, and the plaintiff in that case loseth not liberam legem. f Amittere liberam legem is to become infamous and of no credit, never to be witness, or Juror: for when he is of fame and credit, he is called Liber & legalis homo: and such men ought to be of Juries and Witnesses, because they do enjoy liberam legem. g And a Champion ought to be liber homo, and so is the Entry, per corpus liberi hominis. Et quam infamiam victus incurrit, sæ Glanvil lib. 2. c. 3. & lib. 14. c. 1. And he further saith, Talis debet Campio petentis esse, qui sit, & esse possit inde testis idoneus. So as no man by the ancient Common Law could be a Champion, but he that knew the right, and was a witness thereof: and therewith agreeth the Statute of W. 1. cap. 40. wherein observe what the oath was by the Common Law. Aliquando patria stat pro campione, & aliquando in bre de recto campio stat pro patria. Campio is derived à campo, because it is publickly stroken in the field, and is called Camp fight: and is taken in the Common Law for one that striketh a legal Camp fight or Combat in another mans quarrel: in Latin he is called \* Pugil, à pugna. But the defendant in an appeal that is to combat, is not called a Champion, because he fighteth for himself. And these combats in cases whereof the consuance belongs to the Common Law, are to be directed by the Judges of the Common Law secundum legem & consuetudinem Angliæ, and not by the Constable and Marshal by the Civil Law as all our ancient Authors and Books abovesaid do agree, which also is apparent by the Statute of 13 R. 2. cap. 2.

22 Ass. p. 55. 22 E. 3. cor. 261. 3 E. 3. cor. 328. 3 E. 3. ib. 288, 289, 290.

\* See in the Chas. of Hue and Cry. a Rot. Pat. 3 H. 4. part. 2. Duellum percussum. 13 H. 4. 4. 37 H. 6. 20, 21. See before in the Chapter of Approver. Fleta l. 1. c. 32. b 4 E. 3. 41. 30 E. 3. 20. 29 E. 3. 12. 13 Eliz. Dier 301. Mirror. c. 3. §. Combat, & S. Juramentum duelli, & S. Ordinatio pugnantium.

c Judgment in Law against a Recreant and Craven Champion is perdere liberam legem.

See a notable Record hereof R. p. 55 H. 3. m. 3. Glanv. l. 2. c. 3. lib. 14. ca. 1. d Mirror c. 3. §. Ordinatio pugnantium L' horrible mort de Cravent.

e 41 E. 3. cor. 98. Creant for recreant. Bract. lib. 3. f. 141. Eric. fo 42. 81. Fleta lib. 1. ca. 32. 19 H. 6. fo. 35. 21 H. 6. 34.

\* Mir. c. 3. Subi su.

f Glanvil l. 2. c. 19. Legem terræ amittentes perpetuam infamiz notā inde merito incurrunt. See the first Part of the Inst. Sect. 514. 27 Ass. 59. liberā legē. qui, &c. g 1 H. 6. 6. 3 H. 6. 55 See the oath in appeal, Bract. l. 3. fol. 141. b. Britton fo. 42. Fleta l. 1. c. 32. Glanvil l. 2. c. 3. lib. 9. cap. 1. Et lib. 14. cap. 1. 9 H. 4. 3. 17 Ass. 3. 17 E. 3. 2. 9 E. 4. 25. Fleta ubi sup Lib. Int. Co. fo. 182. 55 H. 3. ubi sup.



*Judgment in an Indictment of Conspiracy, &c. where the party indicted is legitimo modo acquietatus.*

4 H. 5. Indict. 220.  
Tr. 12 E. 3. coram  
Rege. Rot. 148.  
Wilt. judicium  
reddit. cont. Con-  
spiratores. Pasch.  
32 E. 3. Rot. 58.  
Somerf. 27 Aff. 59.  
24 E. 3. 34. 43 E. 3.  
33. b. Vid. Artic.  
sup. cart. cap. 10.

Nota, The judgment in this case is, as in case of attain against a Jury, (whereof we shall speak hereafter,) viz. Quod committantur Gaolæ Domini Regis, & quod omnia terræ & tenementa præd. R. & C. capiantur in manum Domini Regis, & devastentur, & extirpentur, & uxores & liberi eorum amoveantur, & omnia bona & catalla eorundem R. & C. forisfaciant Domino Regi, & amodo amittant liberam legem imperpetuum.

Nota in this judgment Five severe punishments. 1. That their bodies shall be imprisoned in the common Gaol. 2. Their wives and children removed out of their houses. 3. That all their houses and lands shall be seized into the Kings hands, and the houses wasted and the trees extirpated. 4. All their goods and chattels forfeited to the King. 5. That they for ever shall lose the freedom and franchise of the Law. That is, First, they shall never be of any Jury or Recognitors of Assise. Secondly, nor ever be received for a witness in any case. Thirdly, that they shall never come into any of the Kings Courts, but make Attornies, if they have any thing to do there. And this is called a \* villanous judgment, because of the villany and infamy which they deserve against whom it is given: And all is inflicted by the Common Law, for that the offenders by false conspiracy under the pretext of Law, by indictment of treason or felony and legal proceeding thereupon, sought to do the greatest injustice by false conspiracy to shed his blood, who afterwards is thereof legitimo modo acquietatus.

\* 24 E. 3. fol. 33.  
27 Aff. 53.

But in a Writ of Conspiracy at the suit of the party grieved, the Judgment is, damages to the party, fine to the King, and imprisonment. And the reason thereof is, First, for that when they are indicted at the suit of the King, the judgment is so severe, for that they falsely conspired in the Kings name, & at the Kings suit by indictment, &c. to do so horrible injustice: therefore at the Kings suit they shall be heavily punished. Secondly, for that as it is said in 15 E. 2. De exilio Hugonis, &c. the Law which was instituted for the maintenance of peace and of good men, and the punishment of the evil, is turned to the disheritance of the great men, and destruction of the people. Thirdly, for that the judgment at the Kings suit is by the Common Law, and the Action of the party is given by Statute, which giveth no such punishment: but the party in his action, in respect of the danger of his life, is to recover answerable damages. Of Conspiracy see the Register fol. 134. a. & b. & 188. F. N. B. 114, 115, &c. Staunf. pl. cor. fol. 172, 173, 174, 175, &c. and in the new Book of Entries, fol. 109. a president of a conspiracy upon an indictment of felony.

4 H. 5. judg. 220.  
24 E. 3. 34. 27 Aff.  
59.

4 3 E. 3. 33. b.  
Tr. 32 E. 1. Rot. 15  
Eborum.

Parl. 17 E. 3. nu. 50.

It is enacted, that such as be attainted of Confederacy or Conspiracy, shall have no office of the grant of the King, Queen, or other Noble, neither shall be Sheriff or Escheator.

*Judgment in an Attaint.*

Lib. Int. Rastal. fo.  
92. a. 9 E. 4. 51.  
4 H. 5. ubi sup.  
15 Aff. 2. Kelway  
130. b.

Glanvil l. 2. c. 19.  
Bract. l. 4. f. 129.  
Brit. fo. 237, 238.  
Mirror ca. 3. §. de  
attaint. Flet. lib. 5  
c. 21. Apud North-  
alverton in Com.  
Eborum coram Hen. de Guildford & aliis Just. assignatis An. 35 E. 1. attincta. See the first part of the Institutes.  
Sect. 514. Verb. [en attaint.] Vide Mich. 3 H. 4. Rot. 149. judgment en attaint. Ranc.

1. That the plaintiff shall be restored, &c. and the defendant party to the Record, shall be fined in respect the false verdict was given for him (cui bono) by the Common Law.

The judgment against the Petit Jury is, as it is in case of Conspiracy at the suit of the King, as is abovesaid, and in no other, but in those two cases, that villanous judgment is given. See 8 E. 2. Aff. 356. and 42 E. 3. 26. b. Judgments given in Attaint, & nota bene. 16 E. 3. tit. Judgment. 109. 21 H. 7. 83. Kelway. a good president of a judgment given in an attaint. Fortescue c. 26. Concerning Attaints, see the second part of the Institutes, Marlb. c. 14. W. 1. c. 37, &c.

But now by the Statute of 23 H. 8. c. 3. the severity of the punishment is moderated, if the Writ of Attaint be grounded upon that Statute: but the party grieved



grieved may at his election either bring his Writ of Attaint at the Common Law, or upon that Statute: but all attaints either at the Common Law or upon the Statute are to be taken before the King in his Bench, or before the Justices of the Common Pleas, and in no other Courts.

This Act of 23 H. 8. provideth for divers mischiefs which were at the Common Law, and giveth to those of the Petty Jury divers pleas, which they could not have at the Common Law, and hath been well expounded. 7 E. 6. Dier 81 b. Sir John Ailifs case. 3 & 4 Ph. & Mar. 129. b. Heydons case. 3 Eliz. 201. Clovils case. 3 Eliz. 202. Austens case. 7 Eliz. 23. b. Stephens case. See the Record thereof upon the Statute of 23 H. 8. for it is an excellent president.

And generally of Attaints. See Lib. fo. 111, 112. Lib. 3. fo. 4. Lib. 6. fo. 4. 14. 25, 26, 44, 80. Lib. 8. fo. 60. Lib. 9. fo. 12. Lib. 10. fo. 119. Lib. 11. fo. 643. 62. See also the new Book of Entries, 63, 66, 68, 70, 73, 76, 77, 81, 83, 85, 86, &c.

*Judicium de corrupto Judice.*

We could not pass over a strange judgment of Suspendatur, &c. as in case of Felony (which we have touched before in the Chapter of Bribery) given against Sir William Thorpe, lately before Chief Justice of England, which we find of Record in these words. Processus factus An. 24 E. 3. contra Willielmum Thorpe chivaler nuper capitalem Justiciarium coram Ricō Comite Arundel. T. de Bello-campo Comite Warw. Willielmo de Clinton Comite de Hunt. Joh. de Gray de Rotherfield Seneschallo hospitii Regis, & Barthol. de Burghers. Camerar' Regis Pro eo quod idem Willielmus Thorpe nuper capitalis Justiciarius Domini Regis ad placita coram ipso Rege tenenda, dum stetit in officio, cepit munera contra juramentum suum, viz. de Richard Saltley 10 li. de Hildebrando Boreward 20 li. de Guilberto Hollyland 40 li. de Tho. Darby Sancti Botulphi, & de Roberto Daldarby 10 li. qui pro diversis felonis, falsitibus, & transgressionibus coram ipso Willielmo in sessione sua apud Lincolne Anno 23. fuerunt indictati, & per ipsum Willielmum bñe de exigendo vers. eos respect' fuit: quæ omnia & singula deducere non potuit: Ideo adjudicatum fuit, prout sequitur, viz. Consideratum est per dictos Justiciarios assignatos ad judicandum a secundum voluntatem Domini Regis, & secundum regale posse suum, quod quia prædictus Willielmus de Thorpe qui Sacramentum Domini Regis quod erga populum habuit custodiendum fregit b maliciose, false, & rebelliter in quantum in ipso fuit, & ex causis supradictis per ipsum Willielmum, ut prædictum est, expresse cognitis, suspendatur. Et quod omnia c terra & tenementa, bona & catalla sua Domino Regi remaneant forisfacta. Et postea Dominus Rex mandavit bñe suum sub privato sigillo, all in French, and there entered de verbo in verbum. Ideo consideratum est quod executio Judicii prædicti de suspensione ejusdem Willielmi omnino cesset & ei pardonetur. Et quod idem Willielmus remittatur prisonæ Turris prædictæ ad gratiam Domini Regis expectandam, &c. Et non est intentio Domini Regis quod hujusmodi judicium in consimili casu versus quemcunque alium ex quacunque causa se teneat vel extendat, sed solummodo versus eos qui prædictum d Sacramentum fecerunt, & fregerunt & habent leges regales Angliæ ad custodiend'.

e We have also found, that at a Parliament holden at Westminster in Octabis Purificationis beatæ Mariæ, Anno 25 E. 3. holden before Lionel Duke of Clarence by force of the Kings Commission, &c. Commandment was given, that the Record of the said Judgment against the said Sir William Thorpe should be brought into the Parliament, and there to be openly read before the Nobles of the Parliament to hear every of their advices, which was done accordingly, and there the Nobles affirmed the Judgment.

And these words in the said Judgment, Ad judicandum secundum voluntatem Domini Regis, & secundum regale posse suum, and that his Lands should be forfeit to the King, & prædict. Sacramentum, were grounded upon the Oath of the Kings Justices in Anno 18 E. 3. the conclusion of which Oath is, [upon pain to be at the Kings will, body, lands, and goods, thereof to be done as pleaseth him.] We desirous to satisfie our self herein, searched for the Record of this Oath, and

Rot pat. Anno 24 E. 3. part 3. m. 2. in dorf. & Rot. pat. Anno 25 E. 3. part 1. m. 17.

In toto 80 li.

a The effect of the words of the oath hereafter mentioned.

b Nota, here is neither felonice, nor prædatorie in this Indictment, but rebelliter.

c According to the said oath, for otherwise the King had no colour to have the forfeiture of all his lands for Felony, but every Lord of whom they were respec-

tively holden, &c. d Nota, prædictum sacramentum.

e Rot. Parl. in Oct. Pur. An. 25. E. 3. nu. 10.



albeit there is a Parliament Roll of this Parliament, and other Acts, then passed by Authority of Parliament, be entred into the said Roll, yet this is not; for that it had not the warrant of an Act of Parliament. It ought to have been printed amongst the Statutes of the Realm, and the title of them is, Here followeth the oath of the Justices made in the same eighteenth year, but saith not at the Parliament, &c. but after it became to be printed: and that which is printed in anno 20 E. 3. ca. 1. is but a recital made by the King alone, and no Act of Parliament: for it appeareth by that which precedeth, and by the oath it self, that it was the Act only and commandment of the King, for it beginneth: First, We have commanded all our Justices, &c. which former part was but a recital of some precedent Act: and then followeth, We have ordained and caused our said Justices to be sworn, &c. so as the oath was devised by the King, and the Justices sworn before this Parliament. Lastly, it is there said and concludeth: And for this cause we have encreased the fees of our said Justices, &c. which the King of himself did before this Act also.

And we have an ancient Manuscript of the Acts of Parliament in Anno 18 E. 3. and the oath is not within it.

Fleta li. 1. ca. 17.  
§. Cum igitur non sit, &c.

Vet. Mag. Cart.  
1. part fo. 165.  
Vide Brañ. li. 3.  
fo. 109. Sacrament, Justic' itiner' and that then was the effect, de sacrament Justic' residentium.  
Vid. Flet. l. 2. c. 7.  
§. Item atrox est injuria, &c.

And it appeareth by Fleta, that the punishment of a corrupt Judge, that receiveth gift or reward was, Si inde convictus fuerit: quod imperpetuum à concilio regis excludatur; terrasque, res, redditus, & proventus bonorum suorum amittat per unum annum: qui, si proventus non habuerit, puniatur per discretionem regni & consiliariorum regis. And that which Fleta calleth Sacramentum Justic', in Vet. Magna Carta, is named Juramentum consiliariorum regis: for the Judges of England are of the Kings Counsel (as elsewhere hath appeared) for, in, and concerning the Laws of the Realm, in which oath also the said fatal clause is omitted.

See the Mirror cap. 4. §. de faux Judges, & ca. 5. §. 1. of the Law in the time of King Alfred, how many Justices were in one year hanged, as homicides, for their false judgments: but that Law hath been long since delect and antiquated, and yet may serve for a memorial of the time past.

The offence of Bribery was punished by fine and ransome, and loss in the Reign of E. 1. as in the Chapter of Extortion and Bribery before appears: only Sir Thomas Weyland Chief Justice of the Common Pleas, took Sanctuary, and before a Coroner confessed himself guilty of murder, and according to the course of the Common Law abjured the Realm, so as indeed he was attainted of Felony, (which case hath been vehemently urged) but it was not for bribery, but for murder, as any other man might have been.

But to wind up the thread of this discourse with three Acts of Parliament. First, with the Statute of 8 R. 2. wherein it is recited that whereas in the time of King E. 3. it was ordained, that Justices as long as they should be in office, should not take gift or reward, and so forth, as in Veteri Magna Carta, (without the said fatal clause) That Act provideth, that the oath without that fatal clause should extend as well to the Barons of the Exchequer, as to the Justices, and expressed the penalty of all to be (according to the Common Law) viz. loss of office, fine and ransome. But at the next Parliament, viz. 9 R. 2. the said Act of 8 R. 2. for that it was a very hard, and needed declaration, was made of no force till it be declared in Parliament. b Afterwards at the Parliament holden 11 H. 4. it was debated what punishment great Officers there named Counsellors of the King, and Judges, &c. should have, which should take any gift, reward, or brocage for doing of their offices or services: in the end it was declared and enacted by Authority of Parliament, in these words following. Item que nul Chancellor, Treasorer, Gardien del Privy Seal, Counsellier du Roy, Servientes a Counsel du Roy, ne nul autre Officer, \* Jugge ne minister du Roy pernont fees ou gages de Roy pur lour dites offices ou service, preigne en nul manner, en temps avenir aucun manner de c done ou brocage de nulluy pur lour ditz offices & services affaire, sur peine de 1 responder a Roy de la treble de ceo, que illi preignent, 2 & de saistier la party, 3 & puis al volunt le Roy, & 4 soit discharges

8 R. 2. ca. 3.  
Vide Vet. Mag. Cart. fo. 165. a. ubi supra.  
9 R. 2. cap. 1.  
a In respect of the recital.  
b Ro. Par. 11 H. 4. nu. 28. not heretofore printed.  
Vid. 1 H. 4. nu. 99.  
\* Nota.  
c This is agreeable to the Law of God Deut. 16. 19. Non accipies personam, nec munera, quia munera excæcant oculos sapientum, & mutant verba iustorum.  
Exodus 23. 8.



discharges de son office, service, & counsel pur tous jours, & que chescun que verra pursuer en la dit matier eit la sute sibien pur le Roy come pur luy mesme, & eit la tierce part del summe de que la partie soit dument convict. *Responf.* Le Roy le voct.

<sup>a</sup> This Act being by Authority of Parliament, hath limited the punishment (amongst others) of corrupt Judges, of whom now we entreat, so as the former example of Sir William Thorpe is not now to be followed, which we affirm not in favour of sozdid bribery, (which we hate, as in the proper Chapter thereof before appeareth) but in advancement of justice and right, which is the end of our labour in this and other of our works; <sup>b</sup> and therefore have caused that good Act that hath lived so long in obscurity, for the better notice and observation thereof, to be put to the Press, which never was yet printed; and the cause thereof was for that in the Margent of the Parliament Roll of this Act, it is written, *Respectuatur per dominum Principem & Concilium*: A strange presumption without warrant of the King his Father, and of the Parliament, to cause such a respectuatur to be made to an Act of Parliament.

The like he did to another Act in the same Parliament, nu. 63. concerning Attorneys, the like whereof was never done in any former or latter Parliaments. \* This was that Prince Henry, who keeping ill company, and led by ill Counsel, about this time assaulted (some say) and stroke Gascoign Chief Justice sitting in the Kings Bench, for that the Prince endeavouring with strong hand to rescue a prisoner, one of his unchristy minions indicted and arraigned at the Kings Bench Bar for Felony, was prevented of his purpose by the perswasion and commandment of the Chief Justice, for which the Chief Justice committed the Prince to the Kings Bench, whereof some of his followers instantly complained to the King his Father: who informing himself of the true state of the case, gave God infinite thanks, that he had given him such a Judge, as feared not to minister Justice, and such a Son, as could suffer semblably and obey Justice. And this is that Prince, who abandoning his former company and counsel, and following the advice of grave, wise, and expert men, whom he made choice of to be of his counsel, became a victorious and virtuous King, and prosperous in all that he took in hand at home and abroad.

For the duty of Judges it is truly said (as before hath been said) that *Judex debet habere duos sales, viz. salem scientiæ, ne sit insipidus, & salem conscientiæ, ne sit diabolus.* And what persons should be Judges, see Bracton lib. 1. cap. 2. & lib. 3. fo. 106. & Fleta lib. 1. cap. 17. §. caveat, and the Mirror ca. 2. §. 2. de Judges, & Rot. Parl. 17 E. 3. nu. 3. 10.

To these we will add that upon the conclusion of a marriage then to be had between Philip the Son of the Emperour, and Prince of Spain, it was nobly and wisely provided by the Queen, the Lords Spiritual and Temporal, and the Commons by authority of Parliament (amongst many other excellent provisions worthy of observation) that the said Prince should not promote, admit, or receive to any office, administration or benefice in the Realm of England, and the Dominions thereunto belonging, any stranger, or persons not born under the Dominion and Subjection of the most noble Queen of England: and that the said most noble Prince should do nothing whereby any thing might be innovated in the state or right, either publick or private, or in the Laws and Customs of England, or the Dominions thereunto belonging, but shall contrariwise confirm and keep, to all estates and orders, their rights and priviledges.

And it is there further provided for the future, &c. that if the said Prince should have issue male or female, the order of succession is there declared, but with this proviso. Provided nevertheless, and expressly reserved in all and singular the above declared cases of succession, that whatsoever he or she be, that shall succeed in them, they shall leave to every of the said Realms, Lands and Dominions whole and entire their priviledges, rights and customs, and the same Realms and Dominions shall administer and cause to be administered by the natural born of the said Realms, Dominions and Lands.

Nota Four punishments.

1. By the Court of Justice where the matter shall depend (as hath been often observed) by fine and imprisonment.

<sup>a</sup> In the oath of the Justices in Wales, that fearful clause is omitted, neither is it in the oath of the Barons of the Exchequer of England.

<sup>b</sup> Veritas nihil veretur nisi abscondi.

\* See Sir Tho. Eliot in his Governour, &c. Hol. Chron. 543. a.

Anno 1 Mar. Stat. 2. ca. 2. in print. See the Articles of Concord. 21 Maii Anno Dom. 1420. & Anno 8 H. 5. between King H. 5. and Charles the French King, whereby the Crown of France after the death of the said Charles, was established to H. 5. and his heirs Artic. 7. 8. &c.



By this, Philip, (after King of Spain) could not prefer any stranger born to any office of Judicature, &c. within the Realm of England, or Dominions of the same; nor all the time he was within this Realm, ever attempted the same.

Vide Camden.  
EL. 322. Artic. inter reginam Eliz. & Franciscum Ducem Alonson anno 23 El. Populo super importune ut nuberet suadente in comitiis.

a 4 Ja. Regis c. 1. about the midst.  
\* That case being then in question.

And in the Articles, De matrimonio prælocuto inter Reginam Elizabetham & ducem de Alonson, amongst others it was expressly provided, Quod dux nullum extraneum ad aliquod officium in Anglia promovebit, & nihil in jure mutabit, &c.

a Also King James wisely provided by Authority of Parliament, by the advice of the Lords Spiritual and Temporal, and Commons in that Parliament assembled, that whereas in regard of some difference and inequality of the Laws, trials and proceedings \* in case of life, between the Justice of the Realm of England, and that of the Realm of Scotland, it appeareth to be most convenient for the contentment and satisfaction of all his Majesties Subjects to proceed (with all possible severity) against such offenders in their own Country according to the Laws of the same, whereunto they are born and inheritable; and by and before the natural born Subjects of the same Realm, if they be there apprehended. And by the next clause it is provided, that Felonies committed by Englishmen in Scotland, shall be enquired of, heard, and determined before Justices of Assize, or Commissioners of Oyer and Terminer, and Gaol-delivery, being natural born Subjects within the Realm of England, and none other. And the like in another clause with an addition of Justices of Peace to be natural born Subjects within England; and God blessed and prospered this Act with happy and desired success.

Math. Par pag 363  
380. 383. &c.  
Hol. Chron. pag.  
231. 1071. a. b.

But contrariwise, Petrus de Rupibus, or of the Rocks, being a Gascoign born, preferred to be Bishop of Winchester by King John, and being a principal Counsellor about King H. 3. both in his young years, did after in his riper age prefer to offices about the King, such Gascoigns as were of his blood or alliance, (whereof one of his kindred, some say his Son, Peter de Orival Treasurer of England) to the great grief and discontentment of the Nobility of England to have a Gascoign born in place above them. And what heavy event ensued thereupon, let Historians inform you, for it is grievous to me to remember it.

Vide 50 E. 3. nu. 165. for the keeping of the Castle of Nottingham.  
Vide 18 E. 1. Rot. Parl. nu. Solomon de Rolles case.

If you desire to see somewhat concerning Ecclesiastical offices, promotions, and benefices, first what petitions have been made in Parliament against Aliens or Strangers; look in the Parliament Rolls of 50 E. 3. nu. 96, 97, 120. 13 E. 3. nu. 23. 17 E. 3. nu. 59, 60. 18 E. 3. nu. 38. 2 R. 2. nu. 6 H. 4. nu. 48. 4 H. 6. nu. 29. &c. And what Laws have been made that Aliens or Strangers should not be advanced to the same; Vide 35 E. 1. Statut. de Castle. 3 R. 2. ca. 3. 7 R. 2. ca. 12. Rot. Parl. 13 R. 2. not in print. 1 H. 5. ca. 7. 4 & 5 Ph. & Mar. ca. 6.

## CAP. CII.

## Forfeiture, Confiscation, &amp;c.

**N**Ota confiscare & forisfacere are Synonyma, and bona confiscata are bona forisfacta: Fiscus properly signifieth a Panier or Hamper of Officers, wherein the Romans kept their treasure, and by the figure of Metonymia continens pro contento, it is taken for the treasure it self, unde confiscare, and bona confiscata, and thereupon it is said, Quod non capit Christus, capit Fiscus.

Of forfeiture of lands and tenements, and other hereditaments for High Treason, Petit Treason, Felony, Disprision of Treason, Premunire, and in some cases of Disprision, \* and what hereditaments which be not holden shall be forfeited for High Treason, and shall not escheat for Petit Treason or Felony, we have spoken before in their severall Chapters, &c. now let us speak of forfeiture of goods and chattels in these and some other cases.

*a* Of these the forfeiture of some of them must appear, or be found of Record, and therefore these cannot be claimed by prescription; of other some the forfeiture need not appear, or be found of Record, and therefore these may be gained by prescription.

*b* Of the former sort be bona & catalla proditorum, felonum, utlagat', in exigend' positorum, fugitivorum, deodand'; annus, dies, & vastum, &c. and all other forfeitures which must appear or be found of Record.

Of the latter sort be Treasure trove, bona & catalla waviat', extrahur', wrecum maris, &c.

*c* If a Traitor or Felon either rescue himself, or will not submit him to be arrested, but resisteth, and in resistance is slain; upon presentment hereof he forfeiteth all his goods and chattels.

*d* If a Felon in pursuit wawe his own goods, they are forfeited, yet are they not bona waviata.

If in appeal of robbery the Plaintiff omit any of the goods stolen, they are forfeit to the King for the favour, which the Law presumeth the Plaintiff beareth to the Felon: and for that he cannot have restitution for more then is in his appeal.

In appeal of robbery of goods, if the Jury find that the Defendant found them in the high way, in this case the Plaintiff for his false appeal in seeking the blood of the innocent, shall forfeit his goods to the King.

If one arraigned for Treason or Petit Treason, challengeth peremptorily above thirty five: he forfeiteth his goods, and judgment of Pain fort & dure shall be given against him, as one that refuseth the trial of Law, by challenging three full Juries, and like unto one that standeth mute and will not put himself upon the trial of the Law.

By the Statute of 22 H. 8. it was provided that no person arraigned for any Petit treason, murder or felony, shall be admitted to any peremptory challenge above the number of twenty: but at this day in case of High treason, notwithstanding the Statute of 33 H. 8. c. 22, 23. and Petit treason, notwithstanding the Act of 22 H. 8. he may challenge thirty five according to the Common Law, for it is enacted by the Statute of 1 & 2 Ph. & Mar. cap 10. that all trials hereafter to be awarded, or made for any treason, shall be had and used only according to the due order and course of the Common Law, so as to Petit treason the Act of 22 H. 8. is abrogated, but in cases of murder and felony he cannot challenge peremptorily above the number of twenty, and if he challenge above twenty,

For the derivation of *forisfacere*. See the first part of the Institutes, Sect. 74. fol. 59. a. 3 E. 3. forfeit. 24.

\* See before cap. High Treason, Verbo [De tr'es & tenements, &c.] fol. 18. & 19. Et cap. de Petit treason. Verb. [De tiel maner de treason,] &c. fol. 21.

*a* See the 1. part of the Institutes, of both these branches  
*b* See the 1. part of the Institutes, ubi supra, both the former and latter sort.  
*c* 3 E. 3. Cor. 290: 312.

*d* 29 E. 3. 29.  
45 E. 3. Cor. 100:

3 E. 2. Cor. 357, 358.

3 H. 7. 12.

22 H. 8. c. 14.  
32 H. 8. cap. 3.  
See before *Pain fort & dure* in the next preceding Chapter.  
See before in the Chapter of Petit Treason, fol. 26.



ty, and under thirty six, he forfeiteth not his goods and chattels, for no Law give. *h* forfeiture for challenging above twenty; but the Court ought to overrule the challenge: neither is he convicted by the challenging above twenty, as he was by the Common Law by challenge of three Juries, for the Act of 22 H.8. extendeth not to any conviction, but to the challenge only.

3 E. 2. Forfeit. 17.  
23 E. contumac. 17  
7 H. 6. 9. 26 H. 6.  
Attachment 4.  
28 H. 6. 9. 34 H. 6.  
29. 49. 32 H. 6.  
ibid. 9 H. 7. 6.  
H. 6. Tit. forfeit.  
4. 3 Ed. Dier 199.  
pag. 54.

If the party Defendant be attached or distrained by proces out of any Court of Record, County, by force of a Justices, &c. hundred Court, or other Court Baron, and make default, the goods or issues are forfeited, and upon the attachment the Sheriff or other Officer may take the goods with them: and this is the reason that upon the attachment the Sheriff or other Officer ought to return the certainty of the goods and the value, and it is not sufficient to return that he hath attached or distrained the Defendant by goods to such a value, and so upon the distress the issues must be returned in certain, because they are upon default to be forfeited.

1. part of the Institutes. §. 745.

What a person convict of felony before attainder shall forfeit: see the First part of the Institutes, Sect. 745. Verb. Attaint. fol. 391.

See Supra in the Chapter of Deadlands, and in the Chapter of Wreck, Vid. Stanford Pl. Cor. fo. 183, 184, &c.

## CAP. CIII.

### Of the seizure of goods, &c. for offences, &c. before conviction.

1. Vid. 25 E. 3. c. 14.

2.

3. 26 Ass. p. 32. 43 E. 3. fo. 24. 44 Ass. p. 14. 7 H. 4. fo. ult. Lib. 8. fo. 171.  
See the 1. part of the Institutes.

Sect. 745. f. 391. a. Bract. lib. 3. f. 123. Britt. f. 4. b. Fleta l. 1. c. 25, 26.

a Note the generality of these words Hil. 29 E. 1. Coram Rege in Ass. Campions case.

b In this word Treason is comprehended.

c Note Mort del home est feloniam magna.

d Note this reason extends as well to treason, as to felony.

e This Writ is in the Regist. f That is, by Magna Cart. cap. 29. and that Act extends to Treason as well as to felony. 5 E. 3. cap. 9. Fleta lib. 2. c. 26. accord. g Id est, indictatus, for before Indictment no verbal seizure can be made, or Inventory taken. Stat. de 4 E. 1. de offic. Coronatoris, & aliquis culpabilis inveniatur, &c. Britton f. 4. b. accord. h So was it in Bractons time, but afterwards the Township was charged, and answerable for the same. Britton fo. 18. Mirror c. 2. §. 13. Fleta lib. 1. c. 25, 26. 43 E. 3. 18. a.

**R**egularly the goods, &c. of any Delinquent cannot be taken and seized to the Kings use, before the same be forfeited.

The same cannot be inventoried, and the Town charged therewith, before the owner be indicted of Record.

It is to be observed, that there is two manner of seizures, one verbal with taking, removing, or carrying away, only to make an Inventory, and to charge the Town: and the other an actual seizure, and taking away the same.

As to the first, the same is manifest by Bracton, and all our ancient Authors: and let Bracton speak for them all.

Prisones imprisonati, antequam convicti fuerint, de terris suis disseisiri non debent, a nec de rebus suis quibuscunque spoliari; sed dum fuerint in prisona debent de proprio in omnibus sustentari, donec per iudicium deliberati fuerint vel condemnati, &c. And fol. 136. he saith thus, Qui pro *b* crimine vel feloniam magna, sicut pro *c* morte hominis, captus fuerit & imprisonatus, vel sub custodia detentus, non debet spoliari bonis suis, nec de terris suis disseisiri, sed debet inde sustentari donec de crimine sibi imposito se defenderit, vel convictus fuerit, *d* quia ante convictionem nihil forisfacit; & si quis contra hoc fecerit, fiat Vicecom' tale bre. *e* Rex vic' salutem. Scias quod *f* provisum est in Curia nostra coram nobis, quod nullus homo captus pro morte hominis, vel pro alia feloniam pro qua debeat imprisonari, disseisietur de terris, tenementis vel catallis suis, quousque convictus fuerit de feloniam de qua *g* reatus est, sed quam cito captus fuerit per visum custodum placitorum coronæ nostræ, & per visum tuum & legalium hominum apprecientur catalla ipsius capti, & imbreventur, & salvo custodiantur per *h* balivos ipsius qui capitur, & qui bonam inveniant securitatem.

tem de respondendo coram Justiciariis nostris cum ab eis exigantur: salvo tamen eidem capto & familiæ suæ necessariæ, quandiu fuerit in prisona, rationabili estoverio suo, &c. 2. rationabili victu & vestitu. 3 E. 3. Coron. 336. 13 H.

4. 13.

By the Statute of 1 R. 3. cap. 3. it is enacted and declared, That neither Sheriff, Escheator, Bailif of Franchise, *a* nor other person take or seize the goods of any person arrested, or imprisoned, before he be convicted or attaint of the felony, *b* according to the Law of England, or before the goods be otherwise lawfully forfeited, upon pain to forfeit double the value of the goods so taken to the party grieved.

So as (super tota materia) these two conclusions are manifestly proved. First, that before Indictment, the goods or other things of any offender cannot be searched, inventoried, or in any sort seized; nor after Indictment seized, and removed, or taken away before conviction or Attainder. Secondly, that the begging of the goods or state of any Delinquent accused or indicted of any treason, felony, or other offence before he be convicted and attainted, is utterly unlawful, because before conviction and attainder, as hath been said, nothing is forfeited to the King nor grantable by him. And besides it either makes the prosecution against the Delinquent more precipitate, violent, and undue, then the quiet and equal proceeding of Law and Justice would permit, or else by some underhand composition and agreement stop or hinder the due course of justice for exemplary punishment of the offender. And lastly, when the Delinquent is begged, it discourageth both Judge, Jury, and witness to do their duty.

It was an Article of Inquiry, De hiis qui aliquid agunt per quod veritas & Cap. 11. *in*eris: justitia suffocantur.

See Lib. 7. f. 36, & 37. the case of penal Statutes, & nota bene: See also the Statute of 21 Jac. ca. 3. à fortiori in case of life. Placitum coronæ ought not to become in effect placitum privatum. And if it fall out that the party accused be legitimo modo acquietatus, let such as beg him and prosecute against him be terrified by the villanous judgment against Conspirators, which you may read before cap. Judgments and Execution.

*a* Note the generality of these words  
*b* Mic. 10 E. 1. Corā Rege Ro. 34. Norff. Nisi quis appellatus indictatus vel cum manu opere captus fuerit, non competit Regi secta contra ipsum

Begging of lands and goods before conviction, &c. unlawful.



## CAP. CIV.

## Of Falsifying of Attainders.

Syers case, Anno  
32 Eliz.

At the Assises in  
Lent. 32 Eliz. in  
Com. Norff.

Nota, The resolu-  
tion of all the  
Judges.

49 E. 3. 11.  
7 E. 4. 1, 2.

**A**T Twelſe Sessions of the Peace holden at Norwich for the County of Norfolk, Anno 32 Eliz. one Syer was indicted of Burglary, supposed to be committed 1 Augusti Anno 31 Eliz. whereunto Syer pleaded not guilty. And upon the evidence it appeared that the burglary was committed 1 Septemb. Anno 31 Eliz. so as at the time alledged in the Indictment there was no burglary done: and it was conceived that the very true day in the Indictment was necessary to be set down in the Indictment, for that the judgment doth relate to the day in the Indictment, and so avoid ffoffments, Heales, &c. for that (as it was also conceived) the ffoffæ, lessæ, &c. when the attainder is upon a verdict, should not falsifie in the time of the felony: and thereupon the Jury found Syer not guilty. And at the same Sessions Syer was again indicted for the same burglary done 1 Septembris Anno 31 Eliz. when in truth it was done. And he that gave the charge at that Sessions doubted, whether upon this matter Syer might plead *Auter foitz acquite* for the same burglary, (for seeing the offender is allowed no counsel, the Court ought to do him justice and assign him counsel in favorem vitæ, though he demand it not, to plead any matter in Law appearing to the Court for his discharge;) and thereupon he stayed the proceeding against him, and the Assises being at hand he acquainted the Justices of Assise, Wray Chief Justice, and Justice Periam with this case, and with the doubts conceived thereupon; who answered him, that the like case had then been lately propounded by Justice Periam to all the Justices of England; and by them thre points were resolved. 1. That the Crown was not bound to set down the very day when the Treason, Felony, &c. was done, but the day set down in the Indictment being before or after the offence done, the Jury ought to find him guilty, if the truth of the case be so; and if it be alledged before the offence done, to find the day when it was done in *rei veritate*, for they are sworn *ad veritatem dicendam*, and then the forfeiture shall relate but to the day in the verdict, which was the day of the offence done, and not to the day in the indictment. 2. That if the triers find the offender guilty generally, yet the ffoffæ or lessæ, &c. if the offence be alledged in the indictment before it was done to their prejudice, may falsifie in the time, but not for the offence. For seeing the Crown is not bound to set down the very just day when the Treason or Felony, &c. is done, and that the Triers have chief regard and respect of the offence it self, God forbid, but that the Subject might falsifie as concerning the time of the offence. 3. If the offender be found not guilty, he in that case might plead upon a new Indictment, *Auterfoitz acquite*: and so Syer in the case aforesaid did, and was thereupon discharged according to the said resolutions. Nota thre notable points resolved, that never were resolved in any Book that we have read, and remember.

If a man inſeoffeth another of his land, and after is indicted of a felony supposed to be committed before the ffoffment, and thereupon he is outlawed; the party himself is bound hereby, and cannot traverse the felony, but the ffoffæ, &c. may, because he is an estranger thereunto: for a false indictment without any trial by verdict shall not bind the ffoffæ, &c. but that he may falsifie, either by traverse of the felony it self, or of the time of the ffoffment.

And



And so it is if a man maketh a feoffment of his Land, and after taketh Sandur, and confess the Felony before the Coroner by him to be done before the feoffment, and absureth the Realm; the feoffee shall falsifie the attainder by traversing of the felony. And so it is if a man be indicted of felony, and is attained by his own confession, the feoffee shall falsifie the attainder by denying the felony. But otherwise it is if he be attained upon a verdict given by twelve men, for then the feoffee shall not falsifie by traversing of the offence, but of the time only.

Where the case in effect is, that 19 Januarii Anno 1 Mariæ, a Commission of Oier and Terminer in London was directed to Sir Thomas White the Lord Mayor of London, and to divers others, reciting, that where Sir Robert Dudley Knight, 9 Januarii Anno 1 Mariæ was indicted of High Treason before Thomas Duke of Norff. and 14 others Commissioners of Oier and Terminer in the County of Norff. (where in truth that Commission was directed to so many, but the indictment was taken but before 8 of them only) granting to them or any 4 of them, authority to receive the indictment taken before 15 Commissioners, and to proceed thereupon as Special Justices of Oier and Terminer, &c. By precept whereof they proceeded: and upon the confession of the said Sir Robert Dudley, gave Judgment against him in case of High Treason. In this case it was adjudged, that Sir Robert Dudley, then Earl of Leic. might falsifie the said attainder by plea, because it was void, and Coram non Judice: for that the said latter Commissioners had no power to proceed upon an Indictment taken before 8, but before 15, and so the Judgment was void, and coram non Judice: for wheresoever the Judgment is void, or coram non judice, the party is not driven to his Writ of Error, but may falsifie the attainder by plea, shewing the special matter which proveth it void, or coram non judice. In which case the party forfeiteth neither Lands nor Goods. By which case it appeareth how necessary it is for Judges, especially in cases of Treason and Felony, to look into the whole Record, and the proceedings thereupon, before they give Judgment, lest they give an unlawful and unjust Judgment, by means whereof the party may lose his life, &c.

c A and B were indicted, A as principal of Felony, and B as accessory for receiving him. A fled and was attained of the Felony by outlawry. B the accessory (being seised of Lands in fee holden of C) was arraigned upon the indictment and found guilty by verdict, and had judgment, and was hanged: C the Lord curieth as Lord by Escheat: A the principal reverseth the Outlawry, and to the felony pleaded not guilty, and by verdict was found not guilty, and thereupon was by Judgment acquitted. The heir of B brought an Assise of Mordancestoz against C the Lord by Escheat, who pleaded the outlawry of the principal, and the attainder of the accessory, his seisin in fee, and the execution, and his entry as Lord by Escheat. d The plaintiff shewed the reversal of the outlawry by the principal, and his acquittal by verdict and judgment, whereupon the Lord demurred in Judgment. And it was adjudged that the plaintiff in the Writ of Mordancestoz should recover against the Lord by Escheat. Upon which Judgment we observe these five conclusions. 1. That the attainder of the accessory hath a kind of dependency upon the attainder of the principal. For it is a Maxim in Law, That the accessory ought not to be put to answer before the principal be attained; and by the reversal and acquittal of the principal, the dependent Judgment against the accessory cannot stand. 2. f That this attainder of the accessory may be falsified and avoided by the Heir by plea, and is not driven to his Writ of Error; for that the attainder of the accessory is by matter in Law avoided by Recon of as high nature as the attainder of the principal was. For in this case it is impossible that there should be an accessory where there was no principal, of the same Felony. 3. That the Escheat of the Land lawfully once vested shall by this matter ex post facto, be devested. 4. Though there were no immediate descent to the Heir, yet upon the Judgment of the acquittal of the principal the Writ of Mordancestoz was maintainable. Lastly, that albeit the attainder of the accessory is avoided by Judgment of Law, yet the

11 H. 4. 32.  
2 H. 5. Elop. 67.  
7 E. 4. 12.  
Vid. Rot. Parl.  
23 H. 6. nu. 301.

Pl. com. f. 90.  
Le Countee de  
Leic. case.

2 Trin. 2 El.  
b V. for this point  
22 Ass. p. 64.  
39 E. 3. 33. 34.  
41 Ass. plult.  
27 Ass. p. 55.  
39 Ass. p. 6.  
7 H. 4. 3. 9 P. 4. 1.  
10 H. 6. 12. 35 H.  
6. 32. 31 H. 6. 10.  
4 H. 6. 24. 22 E. 4.  
31. Colyns case.  
2 H. 3. 10. 4 H. 7. 12.  
2 H. 7. 60.

Vide Rot. Parl.  
18 E. 1. Rot. 111.  
Mountgom. Bo-  
go de Knovil. &c.  
c See this case  
temps E. 1. tit.  
Mordanc. 45. but  
not fully there re-  
ported.  
Vid. lib. 9. fo. 116.  
Lord Zanchers  
case.

d Where the ances-  
tor of the accessio-  
ry was lawfully  
and in due form  
attainted of felo-  
ny, and yet the  
heir shall inherit  
by matter ex post  
facto.  
e V. li. 5. fo. 119. b.  
Lo. Zanchers case.  
Debili fundamen-  
to fallit opus.  
2 R. 2. fo. 12.  
f 25 E. 3. 57.  
7 H. 6. 44. 43 E. 3. 3.  
4 E. 2. 35.  
11 H. 4. 4. 6.  
9 H. 3. 38. b.  
8 H. 4. 4. 10 H. 6. 6.  
6 E. 4. 8. 8 H. 7. 10.  
13 E. 4. 1.



18 E.4.9.b.

Lord by Escheat remain tenant of the land, until it be evicted from him by action or entry. And so it is if the principal be attainted of Felony, and after the accessory is also attainted, if the principal reverseth his attainder by Writ of Error, the attainder of the accessory dependant thereupon is reversed.

Dier 20 Eliz. 135.  
lib.6. fo.13,14. in  
Arundels case.

A man committes Treason or Felony, and is thereof attainted in due form of Law, and after this Treason or Felony is pardoned by a general pardon; hereby the foundation it self, viz. the Treason or Felony being by Authority of Parliament discharged and pardoned, the attainder (being builded thereupon) cannot stand, but may be falsified and avoided by plea, for he hath no other remedy by Writ of Error or otherwise.

In the County of Warwick there were two brethren, the one having issue a daughter, and being seised of Lands in fee devised the government of his daughter and his Lands, until she came to her age of sixteen years, to his brother, and died. The Uncle brought up his Niece very well both at her Book and Needle, &c. and she was about eight or nine years of age: her Uncle for some offence correcting her, she was heard to say, Oh good Uncle kill me not. After which time the child after much inquiry could not be heard of: Whereupon the Uncle being suspected of the murder of her, the rather for that he was her next Heir, was upon examination Anno 8 Jac. Regis committed to the Gaol for suspicion of murder, and was admonished by the Justices of Assise to find out the Child, and thereupon bailed him until the next Assises. Against which time, for that he could not find her, and fearing what would fall out against him, took another child as like unto her both in person and years as he could find, and apparelled her like unto the true child, and brought her to the next Assises, but upon view and examination, she was found not to be the true child; and upon these presumptions he was indicted, found guilty, had judgment, and was hanged. But the truth of the case was, that the Child being beaten over night, the next morning when she should go to School ran away into the next County: and being well educated was received and entertained of a stranger: and when she was sixteen years old, at what time she should come to her land, she came to demand it, and was directly proved to be the true child. Which case we have reported for a double caveat: first to Judges, that they in case of life judge not too hastily upon bare presumption: and secondly, to the innocent and true man, that he never seek to excuse himself by false or undue means, lest thereby he offending God (the author of truth) overthrow himself, as the Uncle did.

### Falsifying concerning goods.

Bract. lib.3. f.128,  
129.a. Brit. ca.12.  
fol.20.  
3 E.3. forfeit 25.  
22 Ass.96.  
13 H.4. 13.  
a 4 H.7.18.  
b 3 E.3. cor.296.  
& 344.  
c 47 E.3.26.  
13 E.4. fo.8.a.  
Travers de chattel  
al common Ley.  
d 27 Ass. p.5c.  
41 Ass. p.13.  
44 Ass. p.16.  
Lib.5. fo.111.  
Foxleyes case.  
e Bra. li.3 f.129.a.  
43 E.3.18.  
7 E.4 17.a.  
per Cheke. 45 Ass.  
p.9. Stanf pl.  
cor.284.d.

If A be indicted before the Coroner for the death of another, and that A fled for the same; hereby are all the goods and chattels of A forfeited which he had at the time of the verdict given; and this cannot be falsified by traverse. For if the party be arraigned upon the same indictment before Justices of Gaol deliverry, and is by verdict acquitted of the Felony, and that he did not flee for the same; yet he shall forfeit his goods and chattels, but yet a such a fugam fecit may be falsified by matter in Law; for if the indictment be void or insufficient, there is no forfeiture. b But if a man be indicted before Justices of Oier and Terminer, and is acquitted by verdict; and they find further that he fled for the same, his goods are forfeited which he had at the time of the verdict given; c and it being also found in particular what goods he then had, that may be traversed by any that had property in those goods.

There is also a fugam fecit in Law. d As if a man be indicted or appealed of felony and Proces continued against him, upon his default of appearance, and an Exigent awarded against him, whereupon he appeareth, albeit he be after acquitted of the felony, yet all his goods and chattels are forfeited by the awarding of the Exigent upon this fugam fecit in Law. e But this may be falsified by matter in Law: for if the Indictment or Writ of Appeal be insufficient, or error be in the Proces or Exigent, the same may be avoided by exception, and no forfeiture of goods. And there is no Book to warrant the opinion of Justice Stan-

ford



ford in this case : for in 43 E. 3. the original writ was good ; Quod adnoto, 30 H. 6. tit. for-  
non ut arguam, sed ne ipse arguar. And also by matter in deed or Record he may  
excuse his absence, as if he were in prison or beyond the Sea, at the time of the  
Exigent awarded, or if the King before the Exigent doth pardon him. 31. 19 E. 3.  
ibid. 19. 223.  
45 E. 3. Ass. 9.

A. is indicted of Petit Larceny, and upon his trial is found not guilty, and  
that he did fly for the same, he shall forfeit his goods. And so it is if an Exigent  
be upon such an Indictment awarded against him : but he may falsifie the same  
to free him of the forfeiture of his goods by such means as is aforesaid. See the  
first part of the Institutes. Sect. 745. fol. 391. a. 8 E. 2. cor. 4c6.

Hæ leges vitam vestram (generosa Juventus)  
Instituunt, quæ sunt fugienda, sequendaq; monstrant.

## CAP. CV.

## Of Pardons.

**W**E have spoken of the royal and establishing vertue of Justice : royal  
and establishing I say, because Justitia firmatur solium, by Justice the  
Royal Throne is established. We are now to speak of his Mercy : for the  
same Holy Spirit saith : Misericordia & Veritas custodiunt Regem, & roborat  
Clementia Thronus ejus. Mercy and truth preserve the King, and by cle-  
mency is his Throne strengthened. And hereupon is the Law of England  
grounded. Non solum sapiens debet esse Rex, sed & misericors, ut cum sapien-  
tia misericorditer sit justus, &c. Quibus tamen & qualiter est miserendum, doce-  
ant eum merita vel immerita personarum, &c. Of this Royal vertue we shall  
speak the more willingly, for that (as it hath appeared before in the Chapter  
of Sanctuary) all Sanctuaries and places of Refuge for safeguard of life are  
taken away. And where Bracton in the same place speaking of the Kings mercy  
saith, Nihil tam proprium est imperii quam legibus vivere, it is to be observed,  
that the Laws of this Realm have in some sort limited and bounded the Kings  
mercy, as shall appear hereafter. And forasmuch as his mercy is conveyed unto  
his Subjects by his pardons, we shall now speak thereof, being led thereunto,  
by the Book in 9 E. 4. where it is holden A chescun Roy appent per reason de son  
office a faire justice & grace ; justice in execution des leyes, &c. & grace de gran-  
ter pardons, &c. Prov. 16. 12.  
Prov. 20. 28.  
Bract. lib. 2. fo.

a A pardon is a work of mercy, whereby the King either before attainder,  
sentence, or conviction, or after, forgiveth any crime, offence, punishment, execu-  
tion, right, title, debt, or duty Temporal or Ecclesiastical : b All that is for-  
feited to the King by any attainder, &c. he may restore by his Charter : but if by  
the attainder the blood be corrupted, that must be restored by authority of Par-  
liament. 9 E. 4. 2. d.

We call it in Latin Perdonatio, and derive it à per & dono : per is a Prepo-  
sition, and in the Saxon tongue is for or vor : as to forgive it thdughly, to  
remit, and \* forzechink is to repent, and forbear is to bear with patience, as it  
is said, Leve est ferre, perferre grave.

c All pardons of Treason or Felony are to be made by the King, and in his  
name only, and are either general or special. All pardons either general or spe-  
cial are either by Act of Parliament (whereof the Court in some cases shall take  
notice) or by the Charter of the King, (which must always be pleaded,) And  
these again are either absolute, or under condition, exception, or qualification :  
c 27 H 8 cap. 4.  
Hil. 29 E. 1. coram  
Rege Heref. Jo. fil.  
Philippi Perpoint.  
1 H. 4. fo 37.  
17 H. 6. protect. 57.



for some of those pardons last mentioned the party may have a Writ of allowance, or take an averment in certain cases, in others the party may be aided by averment only, where no Writ of allowance doth lie.

And first of general pardons, General pardons are by Act of Parliament, if any of these pardons be general and absolute, the Court must take notice of them, though the party plead it not, but would waive the same. But in these days the general pardons have so many qualifications and exceptions of offences and things, and of persons also, that the Court cannot take notice of them, neither can the party take benefit or advantage thereof unless he plead it: And for that it may concern the safety and quiet of many a Subject, we have expressed the form of the pleading of a general pardon, and have set it down here in Latin: but if the offence be objected in the Star-chambet, or any other English Court, then it must be pleaded in English.

Et præd' A. per B. Attornatum suum venit, &c. (or in propria persona) Et dicit quod dominus Jacobus Rex nunc ipsum A. occasione præmissa impetere seu occasionare non debet: quia dicit, quod per quendam Actum in Parlamento dicti domini regis nunc tent' apud Westm' in com' Mid' nono die Februarii anno regni sui septimo, inter alia, inactitat' & stabilitum existit autoritate ejusdem Parliamenti, \* quod omnes & singuli subditi dicti Domini Regis tam spirituales, quam temporales hujus regni Angliæ, Walliæ, Insularum Jernsey, & Garnsey, & Ville Barwic. hæredes, successores, executores & administratores sui, & eorum quilibet, ac omnia & singula corpora aliquo modo corporata, civitat', burgi, comitat', Riding, Hundred, Lath, Rape, Wapentag', vill', villat', Hamlet' & Tithing, & eorum quilibet, ac successor, & successores eorum, & cujuslibet eorum autoritate ejusdem Parliamenti acquiescerentur, perdonarentur, relaxarentur, & exonerarentur versus dictum dominum Regem, hæredes & successores suos, & quemlibet eorum de omnibus prodicionibus, felonis, offensis, contempt', transgress., intrationibus, injuriis, deceptionibus, malegesturis, forisfacturis, penalitatibus, & summis pecuniæ, pœnis mortis, pœnis corporalibus, & pecuniariis, & generaliter de omnibus aliis rebus, causis, querelis, sectis, judiciis, & executionibus in prædicto Actu non exceptis, neque forspris', quæ per ipsum dominum regem aliquo modo, seu per aliquem modum perdonari potuerunt ante & usque nonum diem Novembris tunc ultim' præterit' ante editionem Actus prædicti, cuilibet, aut alicui suorum subditorum, corporum corporat', civitat' burgorum, comitat', Riding, Hundred, Lath, Raparum, Wapentag', villæ, villat', & Tithing, vel aliorum aliorum prout in Actu prædicto plenius continetur. Et idem A. dicit quod \* offensa prædicta versus ipsum in forma prædicta objecta non est in Actu prædicto excepta, neque forsprisata. Et quod ipse est & tempore editionis Actus prædicti fuit subditus & ligeus dicti Domini Regis nunc natus sub obedientia sua, videlicet apud Westm' prædict', quodque ipse non est aliqua persona in Actu prædict' except', neque forsprisat'. Et hoc paratus est verificare, unde non intendit quod dictus Dominus Rex nunc ipsum A. occasione præmissa impetere seu occasionare velit, unde petit judicium. Et quod ipse de præmissis prædict' exoneraretur, & quod generalis pardonatio prædicta ei allocatur, &c. Sic before cap. of falsifying of Attainders.

By the general pardon of 28 El. all Felonies are pardoned, Burglary excepted. Hil. 29 El. it was resolved by all the Justices, that a man being attained of Burglary was excepted, for the Burglary remains, and is made more apparent by the attainder, and the offence of Burglary is the foundation.

The most beneficial general pardons for the subject were those of the first, and thirtieth years of the Reign of Queen Elizabeth, as by comparison of those with others, will to the judicious Reader easily appear. The best general pardon in all King James time, was that of the 21 year of his Reign, as by comparison of that with any of his former, will evidently appear, and were too long here to be rehearsed.

And now of particular pardons. No particular pardon, be it at the Coronation, or any other, of any offence or offences whatsoever, that is absolute without any

11 H. 4. fol. 41.  
28 H. 8. Dier 28.  
2 Mar. ibid. 200.  
26 H. 8. fol. 7.  
There is a very  
general and abso-  
lute pardon.  
Rot. Parl. 15 H. 6.  
nu 31. 33 H. 6.  
nu 25. &c.

\* This is put but  
for an example,  
but care must be  
taken, that what  
general pardon so-  
ever be pleaded the  
first clause of the  
pardon of dis-  
charge, &c. be  
truly alledged.  
For the exposition  
of general words.  
See L. 5. fol. 47.

Littlerons case.  
Ibid. fol. 45.  
Frandsyns case.  
Ibid. fol. 48 Dry-  
woods case.  
Ibidem 45. b.  
Witrals case.  
Lib. 6. fol. 75 80.  
Sir Edw. Huttons  
case. Lib. 6. fol. 12. b.  
Li Kelw. 8 H. 8.  
187. Ibid. 10 H. 8.  
fol. 158. a. ter.

\* These averments  
(as you perceive)  
may be taken  
without any writ  
of allowance.  
8 E. 4. 3. 4 H. 7. 8.  
Lib. 8. fol. 68.  
Trollops case.

Vid. lib. 6. fol. 13,  
14. in Arundels  
case. A case of  
Burton.

Hil. 29 El. the re-  
solution of all the  
Justices.

Hil. 26 E. 3. Coram  
Rege Rot. 21.  
Wiltes.



any condition, &c. need any writ of allowance, but when the pardon is conditional by force of the Act of 10 E. 3. cap. 2. there a Writ of allowance out of the Chancery testifying that the condition is performed, viz. surely found according to that Act, may be had, or the party may plead the finding of surety, &c. and vouch the record.

The most large and beneficial pardons by Letters Patents, that we have read, and do remember, were that to William Wickham Bishop of Winchester (for good men will never refuse God and the Kings pardon, because every man doth often offend both of them) and that other to Thomas Woolsey Cardinal, which are learnedly and largely penned.

But let us turn our eye to ancient Charters of pardon, and consider well of them.

Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Acquit', Omnibus balivis & fidelibus suis, ad quos præsentēs lre pervenerint, Salutem. Sciatis quod pro bono servitio quod Johannes Chaumprona de Thornton in Pickeringis, in portibus Scotiæ nobis impendit, perdonavimus ei sectam pacis nostræ, quæ ad nos pertinet \* pro morte Isabellæ, quondam uxoris suæ, unde indictatus est, & firmam pacem nostram ei inde concedimus. Ita tamen quod stet recto, si quis versus eum inde loqui voluerit. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Roukesburge, nono die Febr. anno Regni nostri tricesimo.

Edward' Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitan', Omnibus balivis & fidelibus suis ad quos præsentēs literæ pervenerint, Salutem. Sciatis quod pro bono servitio quod Galf. filius Warnum in partibus Scotiæ impendit, perdonavimus eidem Galfro sectam pacis nostræ quæ ad nos pertinet, de homicidiis, roberiis, latrociniiis, fractionibus domorum, feloniiis & aliis transgressionibus contra pacem nostram in Regno nro factis, unde indictatus est, & similiter transgressionem quam fecit ab Ecclesia de Watford, in qua aliquamdiu pro timore inimicorum suorum se tenuit fugiendo, & se secundum legem & consuetudinem Regni nostri Justiciar' non permittendo, & etiam utlagariam, si qua in ipsum ea occasione fuerit promulgata, & firmam pacem nostram ei inde concedimus. Ita tamen quod stet recto in Curia nostra, si quis versus eum loqui voluerit de homicidiis, roberiis, latrociniiis, fractionibus, feloniiis & transgressionibus prædictis. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Lincolne vicefimo secundo die Januarii anno Regni nostri tricesimo, per breve de privato sigillo.

It appeareth by this record, that the said Jeffry was indicted for the death of a man, and of divers Burglaries and Felonies, and being thereupon arraigned prayed his Clergy, sed salvo sibi privilegio clericali posuit se super patriam, and was found not guilty, &c. in the proceeding whereof there was manifest error, and obtained the pardon. Herein divers things are observable: First, That the pardon is de \* homicidiis, and not de murdris, neither have we seen any pardon of murder by any King of England by express name. Secondly, By these ancient words the King doth pardon sectam pacis nostræ, quæ ad nos pertinet de homicidiis, &c. & firmam pacem nostram ei inde concedimus. This secta pacis is by Indictment, which is the Kings suit, and, as it were, his declaration. Thirdly, That the King of ancient time did not pardon homicidium, &c. but sectam pacis nostræ quæ ad nos pertinet de homicidiis, &c. yet when he pardoned, and released the suit or mean, viz. sectam pacis, &c. the offender was discharged of the homicide it self, in diebus illis, but at this day the offence it self is pardoned, which is the surest way.

The King brought an action of debt upon an obligation, the Defendant pleaded non est factum, and at a Nisi prius it was found the deed of the Defendant; and before the day in bank, the King pardoned the Defendant all debts, querels, &c. and after the King had judgment, and sued out execution, and the Defendant came and pleaded the pardon, and it was adjudged that in the Kings case, he might plead the same, though he had no day in Court, because he could not have an Audita querela, or a Scire fac' against the King: and there-

fore

3 H. 7. 2. this Statute expounded and this Act extend to felony, and not to treason.

Rot. Pat. 21 Julii Anno i R. 2.

Rot. Pat. 12 Feb. 21 H. 8. Great offences need great pardons, little offences are soon forgiven.

Hil. 29 E. 1. Coram Rege Herford. Johannes fil. Ph. Perpoint, &c.

\* It appeareth by the Record that he killed her per infortunium.

Delib. Gaolæ de Windestore; coram Hugone de Eraund, & Johanne N. prout die Jovis proximi post claus. Paic. Anno 25 E. 1.

\* For this word Homicide see in the Chapter of Murder. See Hil. 1 E. 3. Coram Rege Rot. 7. Northumb. 9 E. 4. 28.

8 H. 4. fol. 22. Lib. 6. fol. 13. b.

34 H. 6. 3. 2. 35 H. 6. 1. 2. 11 H. 7. 10. Lib. 6. f. 79. l. 8. 58. Lib. Keyw. 8 H. 8. fol. 187. 2 R. 2. 4. b. simile.



\* Pl. Com. f. 401.  
Coles case.  
37 H. 6. fol. 21.  
Quatermain's case.  
Lib. 5. fol. 49.  
Vaughans case. L. 6  
f. 13. *Cases de pard'*  
20 El. Dier 135.  
Exod. 21. 12, 13, 14  
Deut. 19. 13. *Non*  
*misereberis ejus, &c.*

a 2 E. 3. c. 2. 14 E. 3.  
c. 14. 10 E. 3. c. 2.  
b 2 E. 3. c. 2. 4 E. 3.  
c. 13. Rot. Par.  
13 E. 3. nu.  
c 27 E. 3. c. 2.  
Trin. 30 E. 1.  
Rot. 20. Coram  
Rege London,  
Anno 29 E. 1. A  
pardon of death,  
ad instantiam Jo-  
han. Butecourt  
Mic. 33 E. 1. Co-  
ram Rege Rot. 65.  
a pardon ad re-  
quisitionem H. de  
B. hun. Count.  
Heref. & Essex.  
d 13 R. 2. Stat. 2.  
ca. 1. 15 R. 2. ca. 6.  
9 E. 4. fol. 26. b.  
6 1 E. 3. fol. 24.  
f 8 H. 6. 20.  
4 E. 4. fol. 10.  
g Lib. 6. fol. 15.  
5 E. 4. 26. b. per  
Eilling' Chief  
Justice.

h Eccles. 8. 11.

i Regula.  
Maledictus est qui  
peccat sub spe.

Genes. 9. 6.  
Numb. 35. 33.

Bract. 1. 3. fol. 132.

foze if he could not plead it, he should be without remedy, but against a com-  
mon person he could not plead it, because he ought to have an Audita querela, or  
a Scire fac'. And in this case it is observable, that albeit by the judgment a  
new title to the said debt is accrewed to the King of Record after the pardon, the  
obligation at the time of the pardon being but a matter in fact, yet for that the  
obligation was the \* foundation of the debt, and the matter whereupon judge-  
ment was given, and by the pardon the debt due by the obligation was extinct,  
the judgment thereupon cannot bind, but is to be avoided by pleading the  
pardon.

What things the King may pardon, and in what manner, and what he can-  
not pardon, falleth now to be treated of.

a In case of death of man, robberies, and felonies against the peace, divers  
Acts of Parliament have restrained the power of granting Charters of par-  
dons. First, That no such Charters shall be granted but in case where the King  
may do it by his oath. b Secondly, That no man shall obtain Charters out of  
Parliament, and accordingly in a Parliament Roll it is said; [For the peace of  
the Land it would much help, if good Justices were appointed in every County,  
if such be let to mainprise do put in good sureties, as Esquires or Gent. and  
that no pardon were granted but by Parliament.] Thirdly, For that the  
King hath granted pardons of felonies upon false suggestions, c it is provided,  
that every Charter of felony which shall be granted at the suggestion of any, the  
name of him that maketh the suggestion shall be comprised in the Charter, and  
if the suggestion be found untrue, the Charter shall be disallowed. And the  
like provision is made by the Statute of 5 H. 4. cap. 2. for the pardon of an Ap-  
prover.

d Fourthly, It is provided that no Charter of pardon for murder, treason, or  
rape, shall be allowed, &c. if they be not specified in the same Charter.

Before this Statute of 13 R. 2. by the pardon of all felonies, treason was  
pardoned, and so was murder, &c. f At this day by the pardon of all felonies, the  
death of man is not pardoned. These be excellent Laws for direction, and for  
the peace of the Realm. g But it hath been conceived, (which we will not ques-  
tion) that the King may dispense with these Laws by a non obstante, be it gene-  
ral or special, (albeit we find not any such clauses of non obstante, to dispense  
with any of these Statutes, but of late times) These Statutes are excellent in-  
structions for a religious and prudent King to follow, for in these cases, Ut sum-  
mæ potestatis Rege est posse quantum velit, sic magnitudinis est velle quantum possit.  
Hereof you may read more in Justice Stanford, lib. 2. cap. 35. in divers places  
of that Chapter, of his grave advice in that behalf. Most certain it is, that  
the Word of God hath set down this undisputable general rule, h Quia non  
profertur cito contra malos sententia, filii hominum sine timore ullo perpetrant ma-  
la. And thereupon the rule of Law is grounded. i Spes impunitatis continuum  
affectum tribuit delinquendi. Et veniæ facilitas incentivum est delinquendi. This  
is to be added, that the intention of the said Act of 13 R. 2. was not that the  
King should grant a pardon of murder by express name in the Charter, but be-  
cause the whole Parliament conceived, that he would never pardon murder by  
special name for the causes aforesaid, therefore was that provision made, which  
was (as in other cases I have observed) grounded upon the Law of God, Qui-  
cunque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe  
Dei creatus est homo. Nec aliter expiari potest, nisi per ejus sanguinem, qui alterius  
sanguinem effuderit. And the words of every pardon is after the recital of the  
offence, Nos pietate moti, &c. See before in the Chapter of Murder, and in the  
Second part of the Institutes, Stat. de Glouc. cap. 9. and the Register fol. 309. par-  
don of the King, De morte per infortunium, se defendendo, vel per lunaticum,  
vel per furiosum.

By the ancient and constant rule of Law, Non poterit Rex gratiam facere cum  
injuria & damno aliorum: quod autem alienum est, dare non potest per suam  
gratiam.



In an appeal of death, robbery, rape, &c. The King cannot pardon the Defendant, for the Appeal is the suit of the party, to have revenge by death: and whether the Defendant be attainted by Judgment, &c. or by outlawry, the pardon of the King shall not discharge the Defendant. \* In an Appeal, the Defendant wages battel, the Plaintiff counterpleads, for that the Defendant brake prison, if the King pardon the breaking of prison, the counterplea fails. Note the breaking prison is a collateral act: and yet in divers cases at the only suit of the party, when the Defendant either by the Common Law, or by any Statute (besides the restitution, or damage of the Plaintiff) is thereby also to have an exemplary punishment, the King may pardon the same. For example, In an attainder by A. against the party, and the Petit Jury; against the party to have restitution, this the King cannot pardon: against the petit Jury, by the Common Law that they should lose liberam legem, their wives, and children cast out of their houses; their houses wasted, their trees prostrated, their Meadows ploughed up, their goods and chattels seised, and their bodies taken, this the King may pardon, because it is a punishment exemplary to deter others, and tendeth not to the restitution or satisfaction of the Plaintiff.

Now to take an example upon a Statute. De pueris masculis five foemellis (quorum maritadium ad aliquem pertineat) raptis & abductis, si ille qui rapuit non habens jus in maritagio, licet postmodum restituat puerum non maritatum, vel de maritagio satisfecerit, puniatur tamen pro transgressione per prisonam duorum annorum. In this case the party being satisfied, the King may pardon the imprisonment by two years, for that was added as a punishment exemplary, puniatur, &c. And this doth notably appear by a Charter of pardon which King E. 2. made after this Statute. Rex de gratia sua speciali perdonavit Godithæ, quæ fuit uxor Roberti de Waldisch, id quod ad ipsum pertinet, de transgressione quam ipsa Goditha fecit Agathæ, quæ fuit uxor Johannis de Waldisch de Ellam, rapiendo & abducendo Johannem fil' & hæredem Johannis de Waldisch infra ætatem existentem, cujus maritag' ad ipsam Agatham pertinet unde ipsa Goditha coram Domino E. quondam Rege Angliæ patre ipsius Regis convicta fuit, & per considerationem Cur' dicti patris prisonæ adjudicata per biennium ibidem moratura, & etiam tempus imprisonmenti quod adhuc restat de biennio prædicto. Ideo vult idem Rex quod præfata Goditha \* de eo quod ad ipsum pertinet pro transgressione prædicta sit quæta, & quod à prisona prædicta, si pro eo quod ad ipsum Regem inde pertinet, & non alia de causa detineatur in eadem, deliberetur. Teste Rege apud Westm. 8. die Maii anno Regni sui primo. Ideo ipsa Goditha inde quæta quo ad hoc, quod ad Dominum Regem inde pertinet, &c.

See more of this matter, 3 El. Dier 201, 202. 9 El. Dier 261. Musgraves case. 16 El. Dier 323. Taverners case.

The Defendant in an Appeal of murder upon not guilty pleaded, was found guilty of manslaughter: and it was resolved by the Justices upon conference between them, that the Queen might pardon the burning of the hand, for that is no part of the judgment at the suit of the party Plaintiff in the appeal, but it is a collateral, and exemplary punishment inflicted by the Statute of 4 H. 7. cap. 13.

In some actions wherein the subject is sole party (as appeareth by that which hath been said) some things the King may pardon: so on the other side, where the King is sole party, yet some things there be, that he cannot pardon. As for example, For all common nuisances, as for not repairing of bridges, highways, &c. the suit (for avoiding of multiplicity of suits, which the Laws abhor, and that nulli magis tueri rempublicam creditum est quam Regi) is given to the King only, for redress, and reformation thereof, but the King cannot pardon, or discharge either the nuisance, or the suit for the same; for, as Bracton saith, Non poterit Rex gratiam facere cum injuria & damno aliorum. See Glanvill lib. 7. cap. 17. vers. finem.

11 R. 2. Chrē 17.  
2 R. 3. fol. 8.  
See 4 Maria Dier  
13.  
\* 2 E. 3. Cor. 134.

13 E. 4. 5. d.

W. 2. cap. 35.  
Anno 13 E. 1.

Paſch. 34 E. 1.  
Coram Rege Rot.  
30 Ranc. in Ravishment de gard.

See the First part  
of the Institutes.  
W. 2. cap. 35.  
\* Nota de eo quod  
ad Regem pertinet.  
Anno 1 E. 2.

Trin. 40 El. coram  
Rege in appeal de  
murdro. Inter  
Shugborough &  
Buggings.  
Li. s. f. 50. & 11 c. b  
15 H. 7. 9. 4 H. 7.  
cap. 13.

3 E. 3. Ass. 445.  
16 E. 3. Grant. 53.  
35 H. 5. 29. per  
Fortescue.  
37 H. 6. 4. b.  
Pl. Com. 487. in  
Nichols case.



4 E. 4. fol. 4. 12.

11 H. 4. 43.  
27 H. 6. 4. b.  
1 H. 7. 10. b.

1 H. 7. 3. 37 H. 6. 4.  
See before cap. 88.  
Aginst vexarious  
Relators, &c. in  
fine.  
\* 3 H. 2. c. 12. &c.

Lib. 5. fol. 50. Bug-  
gins case.  
Eodem lib. fol. 51.  
Halls case.  
a Prov. 20. 28.  
Misericordia &  
veritas custodiunt  
Regem.

b 9 E. 4. 28.  
1. E. 3. Cor. 124.  
c E. 4. per Cheke  
11 H. 4. 16.  
c Lib. 6. fol. 13.

F. N. B. 225. c.

9 H. 5. 14. 15.

F. N. B. 269.  
20 El. Dier 135.  
Lib. 6. fol. 13, 14.  
Lib. 5. fol. 51.  
Halls case.  
Regist. 67.  
Mich. 37 & 40 El.  
Resolution of the  
Justices concern-  
ing Pardons and  
Licenses of Alie-  
nation and the  
pleading of them,  
&c.

29 Aff. pl. 38. 46 E.  
2. 23. Pl. Com. 398.  
7 E. 6. Tit. Estopp.  
Br. 222.

The Customer albeit the bond and surety be made to him for the importing of Wullion according to the Statute of 14 E. 3. cap. 1. yet cannot he release it, quia pro bono publico. If one be bound in a recognisance, &c. to the King to keep the peace against another by name, and generally all other Lieges of the King; In this case, before the peace be broken, the King cannot pardon or release the recognisance, although it be made only to him, because it is for the benefit and safety of his subjects.

After an action popular brought, tam pro Domino Rege, quam pro seipso, according to any Statute, the King cannot discharge but his own part, and cannot discharge the Informers part, because by the bringing of the action he hath an interest therein: but before action brought, the King may discharge the whole, (\* unless it be provided to the contrary by the Act) because the Informer cannot bring an action or information originally for his part only, but must pursue the Statute: and if the action be given to the party grieved, the King cannot discharge the same.

All suits in the Star-chamber though exhibited by the party, are Informations for the King, and the King may pardon them, but after judgment (and damages, if any be given) and costs taxed, the King cannot pardon them.

a And that party which informeth not the King truly, is not worthy of his grace and forgiveness, and therefore either Suppressio veri, or expressio falsi doth avoid the pardon.

b A man commits felony, and is attainted thereof, or is absured for the same, the King pardoneth him the felony without any mention of the attainder, or abjuration, the pardon is void. c But if a man be attainted of burglary, and by the general pardon all felonies, &c. are pardoned (except all burglaries) the attainder and burglary be excepted, as before is said.

The King pardoneth to A. a felony whereof he standeth indicted, or indicted and attainted, &c. and in truth he is not indicted, nor attainted, &c. this is expressio falsi, and maketh the pardon void. A. is outlawed, and the King pardons him the outlawry, and all his goods; it is void for the goods, for he must have a grant of them.

If a man be indicted of felony, and the King resiteth the same, and pardoneth the felony contained in the indictment, and all outlawries thereupon, if any be, this is a good pardon of the outlawry, though it be doubtfully alledged, and the King not certainly informed.

The King may pardon one convict of heretic, or of any other offence punishable by the Ecclesiastical Law. In all proceedings in the Ecclesiastical Court ex officio, the King may pardon the offence. The King may also pardon Piracy upon the Sea; but by what word, and in what manner, see before in the Chapter of Piracy.

All the Justices of England being assembled at Serjeants Inn in Fleetstreet, when I served Queen Eliz. as her Attorney general, I moved this case unto them. A man seised in fee of two manors, the one holden of the Queen by Knight service in Capite, and the other holden of a common person, alieneth both, and the Alienee sueth out a pardon for both, in which pardon the words are, quæ de nobis tenentur in capite per servic' militare, ut dicitur, and after this pardon being transcribed into the Exchequer, process goeth out against the Alienee, who pleadeth the pardon, beginneth his plea thus, Quibus lectis & auditis idem A. queritur se colore præmissorum graviter vexatum & inquietat' fore, & hoc minus iuste; quia dicit quod eadem Domina Regina per Literas suas Patentes, &c. and plead the Letters Patents of pardon, as they be with the said clause of ut dicitur, and after he alieneth the manor which in rei veritate was not holden: The question was, whether the second Alienee may plead the truth of the matter, or ought to be concluded by the pardon and plea of the first Alienee. And first the Justices had consideration of the books in 29 Aff. pl. 38. 46 E. 3. 33. Pl. Com. 398. 7 E. 6. Tit. Estoppel, Br. 222. And in the end it was resolved by all the Justices, that the pleading of the pardon or



of a licence, as it is, is no conclusion for no more then the pardon or licence being not positive or affirmative, but (ut dicitur) is a conclusion; no more is the pleading of them with the clause of (ut dicitur) any conclusion. And conclusions shall not be wrought by inference or implication of a thing that is not directly alledged. But if the pardon or licence had been affirmative and direct without the clause, ut dicitur, it had been a conclusion, and so had the pleading thereof been also. Lastly, it was resolved, that in case of the pardon or licence with the clause, ut dicitur; if the party confess the tenure that plead the same; as to say, Bene & verum est, that the Land is holden by Knights service in Capite, and plead the pardon or licence, this shall conclude: and some of the Barons said, that according to these resolutions it hath been used in the Exchequer, and many presidents be there accordingly: and by these resolutions the Books abovesaid shall the better be understood.

If the King release to A all debts, and in truth A and B be indebted, this shall not discharge B: but otherwise it is in the case of a Subject, for in that case the release to one discharge both.

If one be indebted to the King, if the King pardon or release the debt, the action and suit for the debt is discharged, and if he pardon or release the action and suit, the debt is discharged: and so it is in both these cases in the case of a Subject.

A man is indicted of trespass and outlawed at the suit of the King, Rex pardonavit utlagariam in eum promulgat', & quicquid ad eum pertinet, and notwithstanding the defendant shall make fine, for it seemeth that these words, quicquid ad eum pertinet, without any reference, are too general to dispence with the fine.

We find also a discharge of further proceeding directed to the Judges of the Court, &c. (not by any pardon of the offence) but by the Kings acknowledgment under the Great Seal of the parties innocency, with commandment to the Judges, that in the former proceedings and Proces, &c. they shall altogether surcease: whereupon the Court will award that the party shall go fine die, and that there shall be no further proceeding against him: As taking one example for many. William de Melton Archbishop of York was accused in the Kings Bench coram Rege & concilio suo, in Anno 3 E. 3. for adherency to Edmond Earl of Kent in his Treasons, whereunto the Archbishop pleaded not guilty, and after two Writs of Venire fac' awarded, the King directed his Writ under the Great Seal to the Judges of the Kings Bench, to this effect. Licet venerabilis pater Willielmus Archiepiscopus Eborum, & Stephanus London Episcopus, per diversa brevia nostra coram nobis ad sectam nostram implacitentur de eo quod ipsi Edmundo nuper comiti Kantie adhæsisse debuerant: Quia tamen prædict. Archiepiscopus & Episcopus de adhæsione prædict. omnino immunes reputamus: Vobis mandamus, quod placitis prædictis coram nobis ulterius tenen' omnino supersedeatis. Teste meipso apud Westm. 12 die Decembr. Anno Regni nostri 4. The award of the Court that is given thereupon is very observable, viz. Cujus brevis prætextu, consideratum est, quod prædict. Archiepiscopus eat inde fine die, &c. Et ulterius non procedatur versus eum.

Stephen Gravesend Bishop of London was charged with the same offence in Parliament, Anno 3 E. 3. whence by order of Parliament the matter was referred to the Kings Bench to be tried, where he pleaded not guilty, and after was discharged *ut supra*, by the same Writ. These men (it may be) thought that the taking of the pardon should be an implied confession of the fault, and therefore went a new way: but no man that is wise and well advised will refuse God and the Kings pardon how often soever he may have it; for there is no man but offendeth God and the King almost every day, and the pardon is the safest and surest way.

If a man be indicted of Felony, and found guilty, and being in prison the King may under the Great Seal reciting the offence, &c. retain him to serve in his Wars on this side or beyond the Seas: this Charter he may plead, and the Court ought to allow it. As for example: Quidam indictatus de feloniam, & inde culp. dicit quod Rex eum conduxit, & inde producit cartam, quod Rex eum con-

34 H. 6. 3.  
21 E. 4. 46.  
2 R. 3. 4. lib. 5.  
fo. 56.

22 Aff. pl. 37.

Pasch. 4 E. 3. coram Rege Rot. 38.

Pasch. 4 E. 3. coram Rege Rot. 53.

Pasch. 22 E. 3. coram Rege.  
cor. 239.



a 7 E. 4. 29. a. acc.  
 30 H. 6. 3.  
 See the first part  
 of the Institutes.  
 Sect. 199.  
 b 26 Ass. p. 46.  
 c 5 E. 3. cap. 12.  
 d Pasch. 8 E. 1. in  
 banco Rot. 79.  
 Abbas de Burton,  
 &c.  
 e Vid. Rot. Parl.  
 21 R. 2. nu. 1. 13.  
 &c.  
 f 36 E. 3. ca. ult.  
 4 R. 2. nu. 30, 31, 32  
 1 H. 4. ca. 20.  
 2 H. 4. ca. 17.  
 5 H. 4. ca. 15.  
 4 H. 5. ca. 8. a short  
 and effectual par-  
 don, and many o-  
 thers. Deut. 9. 21.

duxit in Vasc. in exercitu, & dicta carta allocata fuit per curiam. But a protection lyeth not in that case: because a Protection is a formed Writ, and cannot have such a recital of the truth of the case: and a Writs of Protection lyeth not in case of Felony, nor is it to be allowed to any that is prisoner to the Court.

b One indicted of Felony, without any learned Councel, shewed forth a Charter of pardon which was discordant to the Indictment, and also to his name; and because the Court perceived that it was the Kings meaning he should be pardoned, he was remanded to get a better pardon.

c What things be requisite to a pardon of outlawry, see the Statute of 5 E. 3. cap. 12.

d When the parties defendants appeared to the Court to be poor, and were to be amerced or fined, the Entry of ancient time was, Perdonantur per Justic' quia pauperes.

e It is observed that Repells by Parliament of Pardons lawfully and duly obtained, have been seeds of great discontentment, and of evil event.

f General pardons have been often granted at the Petition of the Commons, for they know best where the shoe wringeth them, and wherein, and how they are to be eased.

So odious was perjury, that by the Law of God it was not to be pardoned: Non misereberis ejus, &c.

## C A P. CVI.

### Of Restitutions.

There is another work of Grace and Mercy, that is, when any man or woman being attainted of High Treason, Petit Treason, or Felony, (whereby the blood is corrupted, &c.) or his or her heir is restored.

And seeing we have formerly spoken how far, and to what intent in those cases, the King of his grace may by his Charter of Pardon restore the party: we shall now treat of the restitution of the Delinquent, or of his or her Heirs by Parliament. Attainders ought to be had upon plain and direct evidence, (as before is said) for if the party be executed, restitution may be had of his Lands, &c. but not of his life. Generally, Restituere nihil aliud est, quam \* in pristinum Statum reducere.

Of restitutions by Parliament some be in blood only, (that is to make his resort as heir in blood to the party attainted, and other his ancestors, and not to any dignity, inheritance of Lands, &c.) and this is a restitution secundum quid, or in part. And some be general restitutions, to blood, honours, dignities, inheritance, and all that was lost by the attainder: and that is restitutio in integrum, with an addition sometimes, that it shall be lawful for the party restored and his heirs, to enter, &c. Of the first you may read in Dier 10 Eliz. fo. 274. in Petition: and Rot. Par. 23 Eliz. of the Earl of Arundel, &c. Of the second you may read 15 E. 3. tit. Petition 2. 3 H. 7. fo. 15. a. 10 H. 7. 22, 23. Pl. com. fo. 175. Rot. Par. 13 H. 4. nu. 20. &c. Of both of them you may read plentifully in our Books and Parliament Rolls, and in divers of them with addition of Entry. See 1 H. 8. Kelw. 154. Sir William Odehals case. 4 H. 7. Lo. Ormonds case. Rot. Parl. 11 H. 4. nu. 42. Rich. de Hastings case, and Rot. Parl. 14 E. 4. nu. 4. Sir John Fortescues case, attainted of Treason in 1 E. 4. &c.

And the reason wherefore the King may by his Charter pardon the execution, and restore the party or his Heirs to the Lands forfeited by the attainder, and remaining in the Crown is, for that no person hath thereby any prejudice: but to make

See the first part  
 of the Institutes.  
 Sect. 1 fo. 8. a.  
 & 646, 647. 745.  
 Vid. cap. pardon.  
 fo. 233.  
 \* Gen. 40. 13.  
 Job 12. 23. 42. 10.  
 Restitutio, secundum  
 quid, seu in  
 partem.  
 Restitutio in inte-  
 grum.

Brit. ca. 13. fo. 23.  
 10 Eliz. Dier 274.

3 E. 6. tit. Resti-  
 tution. Br. 37.



make restitution of his blood he cannot do it, but by Act of Parliament, because it should be to the prejudice of others.

In *cartis benigna facienda est interpretatio*, in *foundationibus domuum religiosarum*, *hospitalium*, & *aliorum operum charitatis benignior*, in *testamentis magis benigna*, in *restitutionibus benignissima*. *a* For it is holden in our Books, that in restitutions the King himself hath no favour, nor his Prerogative any exemption, but the party restored is favoured.

*b* King H. 3. was intitled, &c. to the Lands of William de Albo Monasterio by his attainder, and granted the same to Robert de Mares and his Heirs, *donec eas reddiderit rectis hæredibus per voluntatem suam, vel per pacem*. And albeit at the making of this grant William de Albo Monasterio (being dead) could have in respect of the attainder and corruption of blood no right Heir; yet because it was to make restitution, it had a most benign interpretation.

*c* William Lo. Zouche of Mortimer and Elianor his wife prayed to be restored to their Land of Glannor and Morgannon in Wales, the Mannor of Havelly in the County of Worcester, the Mannor of Tewkesbury in the County of Gloucester, being the inheritance of the said Elianor: who by the extort means of Roger late Earl of March, were enforced to pass the same to the King by fine, in consideration of ten thousand pounds the King restored them thereto as in their former estate.

\* Henry Courtney Marquille of Exeter and Earl of Devon, having issue Edward Courtney, his only Son, was attainted of High Treason by the course of the Common Law in Anno 31 H. 8. and in the same year was also attainted by Act of Parliament. Queen Mary by her Letters Patents bearing date 18 Sept. Anno 1 Regni sui granted the Mannors of P. and O. &c. in the County of Devon, &c. to the said Edward Courtney and his heirs: and afterwards 5 Octobris in the same year, at a Parliament then holden, the said Edward and his heirs were from thenceforth by Authority of that Act restored and enabled only in blood, as well as son and heir of the said Lord Marquille his Father, as to all and every other collateral and lineal ancestor and ancestors of the said Edward. And that the several attainders against the said Lord Marquille for the attainder of the said Lord Marquille, be not in any wise prejudicial or hurtful to the said Edward or his heirs for the corruption of the blood only of the said Edward, but that the several attainders and either of them be against him and his Heirs for the corruption of blood only, utterly void. Provided always that the said Act, ne any thing therein contained, should not in any wise extend to give any benefit or advantage to the said Edward, ne to his heirs, to demand, claim, or challenge any Honours, Castles, &c. ne any other hereditaments whatsoever whereunto H. 8. and E. 6. or either of them was entitled, or ought to have and enjoy by reason of the said several attainders of the said late Lord Marquille, or of either of them. Edward Courtney died seised of the said Mannors without issue; 18 Septemb. Annis 3 & 4 Ph. & Mar. and Reinold Mohun, Alexander Arundell, John Vinian the younger, John Trelawny Esq; and Margaret Buller Widow, were his collateral Cousins and Heirs: and whether the said restitution extended to the Heirs collateral of the said Edward, was by the Queens commandment referred to the consideration of the two Chief Justices Popham and Anderson, Peryam Chief Baron, and to Egerton Attorney, and to the Solicitor General. And it was resolved, that by reason of the attainder of the Lord Marquille, if there had been no Act of restitution, the heirs collateral of the said Edward could not have inherited to the said Edward, in respect of the corruption of the blood wrought by the said attainder only: hereupon it was objected, that when it was enacted by the said Act of restitution, that the said Edward and his heirs should be restored and enabled in blood only as Son and Heir to his said Father, as all his ancestors lineal and collateral, that the said restitution extended only to his heirs lineal, for other heirs he could not have as long as the said attainders of the Marquille stood in force, and the words of the Act of Restitution to Edward and his heirs, might be satisfied with the heirs lineal. And upon due

See the first part of the Institutes, Sect. 646, 647. 745. fol. 352. verb: *Le Janke est corrupt,* &c.

*a* See 10 El. Dier ubi sup.

41 E. 3. 5. b.

27 Aff p. 42.

17 E. 3. 40.

5 E. 3. 66.

29 E. 3. 7.

20 Eliz. Dier 360.

Pl. Com. 252. a.

16 E. 3. Livery 30.

44 E. 3. 45.

18 E. 3. 21, 22.

24 E. 3. 29.

40 E. 3. grant 50.

*b* Mich. 8 E. 1. in

Banco Rot. 62.

Norff.

Rot. Par. Anno

4 E. 3. nu. 18. on

the backside of the

Roll.

\* An example of

restitution in

blood only.

11 H. 4. nu. 42.

13 H. 4. nu. 19, 20:

Mich. 35 & 36 El.



consideration had of the case, it was (una voce) resolved by them all, that corruption of blood is a distinct penalty inflicted by Law; and that the said Act of restitution did extend to the heirs collateral of the said Edward, (having no heirs lineal) as to the clearing and restoring of the blood, and avoiding of the corruption thereof: and that it had been sufficient if the Act had restored and enabled him in blood only as heir to his Father, thereby he and his heirs, as well collateral as lineal, might make their descent, or resort from the Marquise (for there was the stop and corruption) and from all other the ancestors of the said Edward, lineal or collateral, and ex abundanti the other clause also is added, for the more manifestation hereof.

Margaret Plantagenet was Daughter to George Duke of Clarence attainted of High Treason by Act of Parliament 17 E. 4. and Sister of Edward Earl of Warwick, only Son of the said George and Isabel eldest Daughter of Richard Nevil Earl of Warwick and Salisbury: which Edward was attainted of High Treason in Anno 15 H. 7. before John Earl of Oxford then being High Steward of England. The said Margaret was by Act of Parliament Anno 5 H. 8. restored to the style, state, name, title, honour, and dignity of the Countesse of Salisbury, (she was the last of the Surname of Plantagenet) which Act is very well penned, and worthy the reading for many respects, and the Preamble thereof, inter alia.

Fills of restitution may begin in the Parliament, either in the House of Commons, or in the Lords House.

a There be also other kinds of Restitutions to be treated of amongst the Pleas of the Crown, as Restitution of goods upon an Appeal, whereof you shall read in Stanford with this addition, Vide lib. 5. fo. 110. a. 21 E. 4. 10.

b And by the Statute of 21 H. 8. cap. 11. Restitution is to be granted upon an Indictment, &c. For by the Common Law the party should not be restored to his goods upon an Indictment (because it is the suit of the King) albeit the enquiry found that the party had made fresh suit. But restitution was to be made upon an Appeal which is the suit of the party.

See Stanford also fo. 167. a. b. whereunto you may add Lib. 5. fo. 110. a. & lib. 6. fo. 80. where you shall find, that though this Statute of 21 H. 8. speak only of the party robbed, yet his executors are within the Statute, and so are his Administrators. For it is a beneficial Law, and giveth a more speedy remedy to the party robbed, &c. then the Common Law gave by way of appeal, and therefore ought to be construed beneficially.

Vide the Register 68. b. that in some cases when the King ought ex merito justitie to make restitution to the party: yet for the honour of the King the Writ saith, sine dilacione restituas de gratia nostra speciali, which derogate nothing from the right of the Subject, when right is accompanied with grace.

Lastly, there are other Laws concerning Restitutions of another kind. c As by the Statute of 8 H. 6. restitution is to be made, when he that hath an estate of Inheritance or Franchhold is disseised by forcible entry or forcible detainer. d By the Statute of 31 Eliz. there shall be no restitution by the Statute of 8 H. 6. upon an Indictment of forcible entry or forcible detainer, where the Defendant hath been three whole years together before the day of such Indictment in quiet possession: and his estate not ended, according to the true meaning of a Proviso in the said Statute of 8 H. 6. as it is declared by the said Act of 31 Eliz.

By the Statute of 21 Jac. Regis, such Judges, Justices, or Justice, as are enabled to give restitution of possession unto tenants of any estate\* of franchhold, &c. shall by reason of this Act of 21 Jac. have the like and the same Authority upon Indictment of such forcible entries or forcible withholdings before them duly found, to give like possession unto tenant for years, tenant by copie of Court Roll, guardians by Knights service, tenants by Elegit, Statute Merchant: or by Statute Staple.

Statute de 5 H. 8.  
not in Print.

14 R. 2. nu. 36.  
a Rot. Par. 18 E. 1.  
nu. 11. of Liberties  
Stanf. pl. cor.  
fo. 165, 166, 167,  
168. 66. 105, 107.  
F. N. B. 66. a.  
b 21 H. 8. cap. 11.  
22 E. 3. cor. 460.

Stanf. 167. a. b.  
Lib 5 fo. 110.  
Lib. 6. fo. 80.

F. N. B. 66. a.  
8 E. 2. tit. forfei-  
ture 34.  
2 E. 3. cor. 3. 65.  
Vid. 40 E. 5. 42.  
Lib. 5. fo. 110.  
Hostons case.  
c 8 H. 6. cap. 9.  
See the second  
part of the Instit.  
cap. 8. H. 6. cap. 9.  
d 31 Eliz. cap. 11.  
Vide 4 Mariz,  
e Dier 141.

21 Jac. cap. 15.  
By the Statute of  
8 H. 6. cap. 9.

And for as much (as it hath been said) no restitution ought to be made where the defendant or party indicted in case of trespass hath been in possession by the space of three whole years, &c. they having the like and same authority in case of tenant for years, tenant by copy or Court Roll, and other the tenants above named, cannot give restitution or possession, where the party indicted hath been in quiet possession by the space of three whole years. Nota, this Act of 21 Jac. extends not to a garden in Socage, nor to a Garden or Bower of a Park: neither (as some hold) doth it extend to him, that by a last Will hath an interest in lands or tenements until debts and legacies be paid, because certain tenants be particularly nominated, and this is casus omissus. But this being a beneficial Law to restore him, that right hath, to his possession of lands, &c. whereof he was wrongfully by force dispossessed, or by force withholden, &c. and being in like case and equal mischief, others do hold, that this Act extendeth to this case of such a devisee, &c. and so it is for a tenant for a year, or for an half, or three quarters of a year.

See the Statute of 32 H. 8. cap. 3. where the particular tenant charged with more then the land is worth, may after his term expired hold over until he be satisfied, &c. in equal case with such a devisee.

\* Nota, there be divers presidents in the Chancery for restitution by Writ to be made after execution upon a Statute Staple.

Anno 25 H. 6. Execution was sued upon a Statute Staple, and for that no Certificate of the Statute, &c. appeared of Record, the Conuser had a Writ of Superfedeas out of the Chancery with restitution to be made; and the form of this Writ appeareth in a Register M. S. in the Chancery.

In the case of Sir Robert Gardner in the time of Sir Thomas Bromley Lord Chancellor, after a Superfedeas granted, execution was done upon a Statute Staple, whereupon a Superfedeas was granted with restitution reciting the special matter.

There is another president in 33 Eliz. in the case of one Carrant, (but there the Writ recited no special cause, but pro diversis causis & considerationibus) a Superfedeas with restitution was awarded.

\* Restitution of another kind, whereof we remember no book case.

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FINIS.

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# THE EPILOGUE.



Hus have we by the great goodness of Almighty God, *Per varios casus, per tot discrimina rerum*, brought this work concerning High Treason, and other *Pleas of the Crown*, or Criminal Causes, and of Pardons, and Restitutions to a conclusion; wherein (as we are verily perswaded) we have made it apparent from the lively voice of the

Laws themselves, that no Country in the Christian world have in Criminal cases, of highest nature, Laws of such expresse and defined certainty, and so equal between the King and all his Subjects, as this famous Kingdom of *England* hath, being rightly understood, and duly executed, to the great honour of the King, and of the Laws, and the happy safety of all his loving and loyal Subjects.

Now seeing *Iustitia est duplex, viz. severe puniens, & vere præveniens*; that is, Justice severely punishing, whereof we have spoken, and truly preventing, or preventing justice, (*quæ adhuc desideratur*) for we have spoken only of the former; we will therefore at this place (for a conclusion) point at the other with a direction how it may be effected.

True it is, that we have found by woful experience, that it is not frequent and often punishment that doth prevent like offences, *Me-* Justice divided.  
*lior est enim Iustitia vere præveniens, quam severe puniens*, agreeing with the rule of the Physitian for the safety of the body, *Præstat cautela, quam medela*: and it is a certain rule, that *Videbis ea sæpe com-* Regula.  
*mitti, quæ sæpe vindicantur*; Those offences are often committed, that are often punished: for the frequency of the punishment makes it so familiar as it is not feared. For example, what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians, that but in one year, throughout *England*, come to that untimely and ignominious death, if there were any spark of grace, or charity in him, it would make his heart to bleed for pity and compassion. (But here I leave to Divines to inform the inward man, who being well informed, *verbo informante*, the outward man will be the easilier reformed, *virga reformante*.) Sta, perlege, plora.

This preventing Justice consisteth in three things. First, in the good education of youth, and that both by good instruction of them in the grounds of the true religion of Almighty God, and by learning some knowledge or trade in their tender years, so as there should not be an idle person, or a \* begger, but that every child, male or female, whose parents are poor, might at the age of seven years earn their own living:

Seneca lib. 1. De Clem. cap. 24.  
Non minus principum turpia sunt multa supplicia. quam medico multa funera. Regula.

Non morbis plerisque sed morbi neglecti curatio corpus interficat.

\* Deut. 15. 4.  
Non erit omnino indigens & mendiculus inter vos, ut benedicat tibi Dominus



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## The Epilogue.

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*Otiſus nihil cogi-  
tat niſi de ventre,  
& vivere.*

ving: for *Ars fit quod a teneris primum conjungitur annis*: and this, for the time to come, would undoubtedly by preventing Juſtice avoid idleneſs in all, ( one of the foul and fatal channels that lead into *mare mortuum* ) and by honeſt trades cauſe them to become good members in the Common-wealth.

Secondly, In the execution of good Laws: True it is that there be good Laws already to puniſh idleneſs, but none of ſufficient force or effect to ſet youth, or the idle on work.

See before Cap. of  
Pardons, fol. 236.

Thirdly, That forasmuch as many do offend in hope of pardon, that Pardons be very rarely granted, for the reaſons in the Chapter of Pardons expreſſed.

*Pſal. 58. 11. Miſeri-  
cordia Domini præ-  
veniet me.*

*1 Maccab. 6. 27.*

*Niſi prævenieris il-  
lis, majora quam  
hæc facient, & non  
poteris eos obtinere.*

*3 & 4 E. 6. cap. 5.*

in the preamble. *Imprimis intereſt rei publicæ, ut pax in Regno conſervetur, & quæcunque paci adverſantur, provide  
declinentur.* 1 Mar. cap. 12. 32 H. 8. cap. 9. See the fourth part of the Inſtitutes, fol. 312. b.

But the conſideration of this preventing Juſtice were worthy of the wiſdom of a Parliament, and in the mean time expert and wiſe men to make preparation for the ſame, as the Text ſaith, *ut benedicat eis Dominus*. Bleſſed ſhall he be that layeth the firſt ſtone of this building, more bleſſed that proceeds in it, moſt of all that finiſheth it, to the glory of God, and the honour of our King and Nation.

*Et pergrata Deus nobis hæc otia fecit,  
Optimus eſt patriæ jura referre labor.*

*Deo gloria, & gratia.*

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FINIS.

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FINIS.



THE  
LIBRARY  
OF THE  
MUSEUM  
OF  
COMPARATIVE ZOOLOGY  
AND ANATOMY  
HARVARD UNIVERSITY



THE  
LIBRARY  
OF THE  
MUSEUM  
OF  
COMPARATIVE ZOOLOGY  
AND ANATOMY  
HARVARD UNIVERSITY





Vera Effigies Viri  
Equitis aurati nuper  
ad Placita coram



clariss EDOARDI COKE  
Capitalis Iusticiarij  
Rege tenenda assignati

*R. Whittier del.*



THE  
FOURTH PART  
OF THE  
INSTITUTES  
OF THE  
LAWS  
OF  
ENGLAND:  
CONCERNING  
The Jurisdiction of COURTS.

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*The Sixth Edition.*

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Proverb. 22. 28.

*Ne transgrediaris antiquos terminos quos posuerunt patres tui.*

Terminos propriæ potestatis egressus in aliam messem perperam mittit  
falces suam.

---

*Authore* EDW. COKE *Milite.*

---

*Hæc ego grandævus posui tibi candide Lector.*

---

L O N D O N,

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Church in *Fleet-street*, M D C L X X X I.





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D E O,  
P A T R I Æ.  
T I B I.

Proœmium.

**I**N the two former parts of the *Institutes* we have principally treated *De communibus placitis*, and of those two great Pronouns (*Meum & Tuum.*) In the Third we have handled *Placita Coronæ*, and Criminal causes. But because *Rerum ordo confunditur, si unicuique Jurisdictio non servetur.* We in this Fourth and last part of the *Institutes* are to speak of the Jurisdiction of the Courts of Justice within this Realm.

*Jurisdictio est autoritas judicandi sive jus dicend<sup>i</sup> int<sup>r</sup> partes de actionibus personarum & rerum secundum quod deductæ fuerunt in judicium per auctoritatem ordinariam seu delegatam :* And again, <sup>b</sup> *Jurisdictio est potestas de publico introducta cum necessitate juris dicendi.* It is derived of *Jus*, and *ditio*, i. *potestas juris.*

*Jurisdictio quid ?*  
Bract. l. 5. fo. 400.  
401.  
Brit fo 1. & 32.  
Fleta lib. 6. ca. 36.  
unde, &c.  
<sup>b</sup> Lib. 10. f. 73. a.  
En le case del  
Marshallsea.

<sup>c</sup> *Curia* hath two severall significations, and accordingly it is severally derived. It signifieth the Kings Court, where his Royal Person, and his Honourable Household do reside, and is all one with *Palatium Regium*, and is derived ἀπὸ τοῦ κυρίου, of the Lord, because the Sovereign Lord resideth there. It also signifieth a Tribunal, or Court of Justice, as here it doth, and then it is derived a cura, quia est locus, ubi publicas curas gerant.

*c Curia quid ?*  
Festus.

Of Jurisdictions some be Ecclesiastical, and some Civil, or Temporal: of both these some be Primitive, or ordinary without commission; some derivative, or de-



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## *A Proeme.*

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legate by commission. Of all these some be of Record, and some not of Record; some to enquire, hear and determine, some to enquire only; some guided by one Law, some by another; the bounds of all and every several Courts being most necessary to be known. For as the body of man is best ordered when every particular member exerciseth his proper duty: so the body of the Commonwealth is best governed when every several Court of Justice executeth his proper Jurisdiction. But if the eye, whose duty is to see, the hand to work, the feet to go, shall usurp and incroach one upon anothers work: As for example, the hands or feet, the office of the eye to see, and the like; these should assuredly produce disorder and darkness, and bring the whole body out of order, and in the end to destruction: So in the Commonwealth (Justice being the main preserver thereof) if one Court should usurp, or incroach upon another, it would introduce uncertainty, subvert Justice, and bring all things in the end to confusion.

Now when I considered how much it would tend to the Honour of the Kings Majesty, and of his Laws, to the advancement of Justice, the quiet of the Subject, and generally to the good of the whole Commonwealth (no King in the Christian World having such Tribunals and Seats of Justice as his Majesty hath; which, God willing, in this Treatise we shall make to appear) that all the high, honourable, venerable and necessary Tribunals and Courts of Justice within his Majesties Realms and Dominions, as well Civil as Ecclesiastical, might be drawn together, as it were in one Map or Table, (which hitherto was never yet done) that the admirable benefit, beauty, and delectable variety thereof might be, as it were, *uno intuitu* beholden, and that the manifold Jurisdctions of the same might be distinctly understood and observed. We having (as elsewhere we have said) collected some materials towards the raising of this great and honourable building, and fearing that they should be of little use after  
my

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## *A Proeme.*

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my decease, being very short, and not easily of others to be understood, if I should have left them as they were.

Out of the duty that I owe to his most excellent Majesty, and my Zeal and Affection to the whole Commonwealth, I have adventured to break the Ice herein, and to publish more at large those things which in our reading we had observed concerning Jurisdiction of Courts. I confess it is a labour of as great pains as difficulty: for as in an high and large building, he that beholds the same after it is finished, and furnished, seeth not the carriages, scaffolding, and other invisible works of labour, industry and skill in Architecture: so he that looketh on a book full of variety of important matter, especially concerning sacred Laws, after it is printed and fairly bound and polished, cannot see therein the carriage of the materials, the searching, finding out, perusing and digesting of Authorities in Law, Rolls of Parliament, Judicial Records, Warrants in Law, and other invisible works, *tam laboris, quam* \* *ingenii*: yet I was the rather encouraged thereunto, both because I have published nothing herein, but that which is grounded upon the Authorities and Reason of our Books, Rolls of Parliament, and other judicial Records, and especially upon the resolution of the Judges of later times upon mature deliberation in many cases never published before; wherewith I was well acquainted, and which I observed and set down in writing, while it was fresh in memory.

\* *Minerva, quæ  
nervos minuens.*

There be amongst the Kings Records divers and many Rolls, whereof you shall find little or no mention (that we remember) in our Books, viz. *Rot. Parliament. Rot. Placitorum Coronæ, Rot. Placitorum Parliament. Rot. Claus. Rot. Brevium, Finium, Inquisitionum, Liberationum, Rot. Cartarum, Eschaetriæ, Pat. Rot. Ordinationum, Rot. Franciæ, Scotiæ, Vasconiæ, & Almanicæ, Rot. Romana, Rot. Judæorum, Rot. Ragman, Brangwin,*



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## *A Proeme.*

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*Rot. Contrariensium* ( And the reason of the naming of this Roll thus was, for that *Thomas* Earl of *Lancaster* ( a man singularly beloved ) taking part with the Barons against King *E. 2.* in hatred of the *Spencers*, it was not thought safe for the King, in respect of their power and greatness, to name them Rebels or Traytors, but *Contrarients* ) and some others. In this and other parts of our Institutes we cite divers Records out of many of these Rolls : Herein, as in the rest of our works, you shall observe, that in the course of our reading we took all in our way, and omitted little or nothing, for there is no knowledge (seemeth it at the first of never so little moment ) but it will stand the diligent observer in stead at one time or other.

And thus for all our pains, wishing the benevolent Reader all the profit, we (*favente Deo & auspice Christo*) begin with the High and most Honourable Court of Parliament.

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OF THE  
High and most Honourable  
COURT  
OF  
PARLIAMENT.

## CAP. I.

*Of what Persons this Court consisteth.*

His Court consisteth of the Kings Majesty sitting there as in his Royal politick capacity, and of the three Estates of the Realm, viz. Of the Lords Spiritual, Archbishops and Bishops, being in number 24, who sit there by succession in respect of their Counties, or \* Baronies parcel of their Bishopricks, which they hold also in their politick capacity; And every one of these when any Parliament is to be holden, ought, ex debito iustitiæ, to have a Writ of Sum-

See the first part of the Institutes, Sect. 164. for the ancient and latter names of Parliament, and the antiquity thereof.

*Modus tenendi Parl. cap. 2.*

\* All the Bishops of England be of the Kings progenitors incorporation, to have succession and foundation, *Tenendum per comitatum seu Baroniam*, and were of ancient time donative, and these Bishops are called by Writ to the Parliament as

mons. The Lords Temporal, Dukes, Marquisses, Earls, Viscounts, and Barons, who sit there by reason of their dignities which they hold by descent or creation, in number at this time 106: and likewise every one of these being of full age ought to have a Writ of Summons ex debito iustitiæ. The third estate is the Commons of the Realm, whereof there be a Knights of Shires or Counties, Citizens of Cities, and Burghesses of Burghes. All which are respectively elected by the Shires or Counties, Cities and Burghes, by force of the Kings Writ ex debito iustitiæ, and none of them ought to be omitted: and these represent all the Commons of the whole Realm, and trusted for them, and are in number at this time 493.

other Lords of Parliament be. Rot. Claus. 9 H. 4. m. 1. Glanvil lib. 7. c. 1. vers. finem. Brañ. lib. 5. f. 412. 427. a. 10 H. 4. 6. 21 E. 3. 60. 17 E. 3. 40. 48. 73. *Dicitur* Dean of London. a 5 R. 2. cap. 4. Stat. ult. so they are ranked. Prov. 11. 14. *Salus ubi multa consilia*. Rot. Parl. 7 H. 4. nu. 2. *Multorum consilia requiruntur in magnis*.

*Of what number.*

In the beginning Romulus ordained an hundred Senators for the good government of the Commonwealth: afterwards they grew to 300, and so many were of the House of Commons in Fortescues time; who treating with what gravity Statutes are made, saith; Dum non unius, aut centum solum consiliorum virorum prudentia, sed plus quam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipsa statuta edita sunt.

Festus.  
Fortescue c. 18.  
f. 40.

Erant autem Senatores majorum gentium, & Senatores minorum gentium, ex patriciis & nobilibus electi, hii ex populo.

Cicero lib. 1. Epist. famil.

And it is observed that when there is best appearance, there is the best success in Parliament. At the Parliament holden in the seventh year of the reign of H. 5. holden before the Duke of Bedford, Guardian of England, of the Lords Spiritual and Temporal there appeared but thirty in all: at which Parliament

Rot. Parl. 7 H. 5.



Rot. Parl. 50 E. 3.  
Bonum Parliamentum.

\* 14 H. 8. 3. per  
Fincux Ho lensh.  
Chron. 34 H. 8.  
955. 957. Dier  
38 H. 8. 60. 61.  
2 & 3 E. 6. cap. 36.  
a 28 E. 3. c. 6. Re-  
gift. 177. F N. B.  
164. k Pl. R. 232.  
St. inf. Pl. Cor. 49.  
b For this distin-  
ction, see the 2.  
part of the Insti-  
tutes, Mag. Cart.  
Verb. [per pares]  
fol. 28.

Of ancient time  
both Houses sat  
together.

Rot. Parl. 50 E. 3.  
nu. 8.

See the 1. part of  
the Institutes, Sect.  
164. ubi supra.  
a Freve Parliam.  
b Brevia originalia  
de vasto, &c.  
c W. 1. in exordio.  
d Glanvil. lib. 8. c.  
10. & lib. 13. c. 32.  
Lib. 9. cap. 10.  
Bracton lib. 3.  
tract 2. cap. 3.  
e Æncidos. 10.  
concilium deorū.

ment there was but one Act of Parliament passed, and that of no great weight. In Anno 50 E. 3. all the Lords appeared in person, and not one by Proxy. At which Parliament, as it appeareth in the Parliament Roll, so many excellent things were sped and done, as it was called bonum Parliamentum.

And the King and these three Estates \* are the great Corporation or Body politic of the Kingdom: and do sit in two houses, viz. the King and Lords in one house called the Lords House, and the Knights, Citizens and Burgeses in another house, called the House of Commons.

a For this word [Commons] see the Statute of 28 E. 3. whereby it is provided that the Coroners of Counties shall be chosen in full County per les Commons de mesme les Counties. Commons are in legal understanding taken for the frank Tenants or Freeholders of the Counties. b And whosoever is not a Lord of Parliament and of the Lords House, is of the House of the Commons, either in person, or by representation, partly coagmentative, and partly representative.

But of ancient time both Houses sat together. In 8 H. 4. an Act of Parliament concerning the succession of the Crown intailed to H. 4. whereunto all the Lords severally sealed, and Sir John Tebetot the Speaker in the name of the Commons put to his seal.

Note, that the Letters to the Pope by all the Nobility of England at the Parliament holden in 21 E. 3. the conclusion is this, In cujus rei testimonium sigilla nostra tam pro nobis quam pro tota Communitate præd. Regni Angliæ præsentib. sunt appensa. Whereby I gather, that at this time the Commons had no Speaker, but both Houses sat together, for if the Commons had then had a Speaker, they would have appointed him to have put to his seal for them, as in 8 H. 4. they did. Certain it is, that at the first both Houses sat together, as it appeareth in the Treatise De modo tenendi Parliamentum. Vide Rot. Parl. 5 E. 3. nu. 3. and in other places in the same Roll, and in 6 E. 3. in divers places it appeareth that the Lords and Commons sat together, and that the Commons had then no continual Speaker, but after consultation had, they agreed upon some one or more of them that had greatest aptitude for the present business to deliver their resolution, which brought great delays of proceeding, and thereupon the Houses were divided, and the surest mark of the time of the division of them is, when the House of Commons at the first had a continual Speaker, as at this day it hath.

After the division the Commons sat in the Chapter house of the Abbot of Westminster.

And this Court is aptly resembled to a Clock, which hath within it many wheels, and many motions, all as well the lesser as the greater must move: but after their proper manner, place, and motion; if the motion of the lesser be hindered, it will hinder the motion of the greater.

### The Names.

This Court is called by several names, as anciently [Witenage Mote] Conventus sapientum; Parliamentum, of which we have spoken in another place; Comitia, à coeundo, quia coeunt ibi deliberaturi de a arduis & argentibus negotiis Regni, & statum, & defensionem Regni, & Ecclesiæ Anglicanæ concernentibus. b Commune concilium Regni, c Generale concilium Regni, & d Concilium Regni, and Assisa ab assidendo, as Assisa de Clarendon 22 H. 2.

Upon some of the Records and Rolls of the Parliament it is written.

Perlege quæ Regni clarissima Conciliorum

Sunt monumenta, aliter nil præter somnia cernis.

e And Virgil writing of the Parliament of the Gods useth the same word of Concilium in the same sense.

Panditur interea domus omnipotentis Olympi,

Conciliumq; vocat divum pater, atq; hominum Rex, &c.

Tacitus in vita Agricolæ in the time of the Britons calleth it Conventus, à conveniendo.

Ingulphus

Ingulphus, who died before 1109 saith, Rex Eldredus convocavit magnates, 34 H.6.4c. a. Pri.  
Episcopos, proceres, & optimates ad tractandum de publicis negotiis Regni. lor.  
Tully calleth it, Confessum Senatorum, à confidendo.

### Parliaments in Scripture.

And the like Parliaments have been holden in Israel, as it appeareth in the 1 Chron. ca. 28.  
holy History. Convocavit David omnes Principes Israel, duces, tribunos, & præ-  
positos turmarum, tribunos, centuriones, & qui præerant substantiis & possessionibus  
Regis, filiosque suos, cum eunuchis, & potentes, & robustissimos quosque in exer-  
citu Jerusalem. And when they were all assembled, the King himself shewed the  
cause of calling that Parliament. Audite me fratres mei, & populus meus, cogi-  
tavi ut edificarem in qua requiesceret arca foederis Domini, & ad scabellum pedum  
Dei nostri, & ad ædificandum omnia præparavi, &c. *b* And the like Parliament  
did King Solomon son of King David hold. Congregavit Solomon majores natu  
Israel, & cunctos principes, tribunos, & capita familiarum de filiis Israel in Jerusa-  
lem, &c. *c* There was also a Parliament holden in the time of the Judges.  
Convenit universus Israel ad civitatem quali homo unus eadem mente, & uno con-  
silio, &c. And that Parliament builded on such unity had blessed success.

As this Court of Parliament the King is Caput, principium & finis. And as *Modus tenend.*  
in the natural body when all the sinews being joyued in the head do joyn their *Parl.*  
forces together for the strengthening of the body, there is ultimum Potentiæ: so  
in the politick body when the King and the Lords Spiritual and Temporal,  
Knights, Citizens, and Burgeses, are all by the Kings command assembled  
and joyued together under the head in consultation for the common good of the  
whole Realm, there is ultimum Sapientiæ.

### What properties a Parliament man should have.

It appeareth in a Parliament Roll, that the Parliament being, as hath been  
said, called Commune consilium, every member of the House being a Counsellor,  
should have three properties of the Elephant; First, That he hath no gall;  
Secondly, That he is inflexible, and cannot bow; Thirdly, That he is of a most  
ripe and perfect memory: which properties, as there it is said, ought to be in  
every member of the great Council of Parliament. First, To be without gall,  
that is, without malice, rancor, heat, and envy. In Elephantæ melancholia transit  
in nutrimentum corporis. Every gallish inclination (if any were) should tend to  
the good of the whole body, the Commonwealth. Secondly, That he be constant,  
inflexible, and not to be bowed, or turned from the right, either for fear, reward,  
or favour, nor in judgment respect any person. Thirdly, Of a ripe memory,  
that they remembring perils past, might prevent dangers to come, as in that  
Roll of Parliament it appeareth. Whereunto we will add two other proper-  
ties of the Elephant, the one, that though they be Maximæ virtutis, & maximi  
intellectus, of greatest strength and understanding, tamen gregatim semper ince-  
dunt, yet they are sociable, and go in companies: for animalia gregalia non sunt  
nociva, sed animalia solivaga sunt nociva. Sociable creatures that go in flocks or  
heards are not hurtful, as Deer, Sheep, &c. but Beasts that walk solely, or sin-  
gularly, as Bears, Foxes, &c. are dangerous and hurtful. The other, that the  
Elephant is Philanthropos, homini erranti viam ostendit: and these properties  
ought every Parliament man to have.

Rot. Parl. anno  
3 H.6. an. 3.

Virg. Georg.  
Illum non populi  
fascies, non purpu-  
ra regum flexit--

Aristotle.  
Bartholomæus.

### Of Records of Parliament.

The reason wherefore the Records of Parliament have been so highly extolled,  
is, for that therein is set down in cases of difficulty, not only the judgment,  
or resolution, but the reasons, and causes of the same by so great advice. \* It is  
Selby. Pasch. 28 E.1. Coram Rege Rot. between the King and Venables in Quare Impedit. Mich. 3 E.2. Coram Rege  
Rot.6. and many others where the causes and reasons pro & contra have been set down, &c. 6 E.3. fol. 5. per Herl.  
3 E.4. b.7. a. 19 H.6.3. a. per Fray.

\* Mich. 5 E.1. in  
communi banco.  
Rot. 1. c. Linc.  
Pasch. 19 E.1. Rot.  
145. Abbot de

true



true that of ancient time in judgments at the Common Law, in cases of difficulties either criminal, or civil, the reasons and causes of the judgment were set down in the Record, and so it continued in the Reigns of E. 1. and most part of E. 2. and then there was no need of Reports: but in the Reign of E. 3. (when the Law was in his height) the causes and reasons of judgments, in respect of the multitude of them, are not set down in the Record, but then the great Casuists and Reporters of cases (certain grave and sad men) published the cases, and the reasons and causes of the judgments or resolutions, which from the beginning of the Reign of E. 3. and since we have in print. But these also, though of great credit, and excellent use in their kind, yet sit underneath the Authority of the Parliament Rolls, reporting the Acts, Judgments, and resolutions of that highest Court.

22 E. 4. 18. per Huf.  
f. y. Rot. Par. 19 E. 1.  
Rot. 12. Margery  
Weylands case.  
Nota quia optime,  
&c.

### *The Summons of Parliament.*

Prov. 13. 16. Sapi-  
ens omnia agit cū  
consilio. Vide in-  
fra. These Writs  
of Summons you  
shall find in for-  
mer times in the  
close Roll, for they  
are not in the Re-  
gister, and in that  
Roll are the Writs  
de expensis militum, civium & burgensium, & procuratorum cleri, and these are in the Register also.

The King de advisamento concilii (for so be the words of the Writ of Parliament) resolving to have a Parliament, doth out of the Court of Chancery send out Writs of Summons at the least forty days before the Parliament begin: Every Lord of Parliament, either Spiritual, as Archbishops, and Bishops, or Temporal, as Dukes, Marquisses, Earls, Viscounts and Barons Peers of the Realm, and Lords of Parliament ought to have several Writs of Summons.

de expensis militum, civium & burgensium, & procuratorum cleri, and these are in the Register also.

### *Temporal Assistants.*

\* Regist. 261. F. N.  
B. 229. a. ib. called  
Attendants.

And all the Judges of the Realm, Barons of the Exchequer of the Coif, the Kings Learned Council, \* and the Civilians Masters of the Chancery are called to give their assistance and attendance in the upper house of Parliament, but they have no voices in Parliament; and their Writs differ from the Writs to the Barons: for their Writs be, Quod interfuitis nobiscum & cum ceteris de concilio nostro (and sometimes nobiscum only super præmissis tractaturi, vestrumque consilium impensuri; but the Writ to the Barons is, Quod interfuitis cum prælatis, magnatibus & proceribus super dictis negotiis tractaturi, vestrumque consilium impensuri.

### *Spiritual Assistants. Procuratores cleri.*

Mod. tenend. Parl.  
c. 2. Rot. Claus.  
8 E. 2. m. 15. Dorf.  
Ib. 5 E. 2. m. 15.  
Ib. 11 E. 3. part. 1.  
m. 1. Ib. 22 E. 3.  
part. 2. m. 3. Ib. 36  
E. 3. m. 16. Rot.  
Par. 18 E. 3. nu. 1.  
3 R. 2. 11 R. 2.  
21 R. 2. Procura-  
tores Cleri. Reg.  
261. a. F. N. B.  
229. a. Procura-  
tores de Clero.  
In fascicul. litera-  
rum procurat. &c.  
13 H. 4. & 5 H. 5.  
See hereafter tit.  
Proxies.

And in every Writ of Summons to the Bishops, there is a clause requiring them to Summon these persons to appear personally at the Parliament, which is in these words, Præmonientes Decanum & capitulum Ecclesiæ vestræ Norwicensis, ac Archidiaconos totumque clerum vestræ Dioceſ. quod iidem Decani & Archidiaconi in propriis personis suis, ac dictum capitulum per unum, idemque clerus per duos procuratores idoneos plenam & sufficientem potestatem ab ipsis capitulo & clero divilim habentes prædict' die & loco personaliter interfint ad consentiendum hiis quæ tunc ibidem de communi consilio dicti Regni nostri divina favente clementia contigerit ordinari: And the Bishop under his seal make Certificate accordingly. And these are called Procuratores cleri, and many times have appeared in Parliament as Spiritual Assistants, to consider, consult, and consent, ut supra, but had never voices there, because they were no Lords of Parliament. Some have thought, that because the Clergy were not party to the election of the Knights, Citizens, and Burgeses, that these Procuratores Cleri were appointed to give their consent for them, but then they should have had voices, which questionless they never had. And by the words of the Writ it was to consent to those things which by the Common Council of the Realm should happen to be ordained, so as their consent was only to such things as were ordained de communi concilio Regni, and that there might be an Act of Parliament without them: and in many cases multitudes are bound by Acts of Parliament which are not parties to the elections of Knights, Citizens, and Burgeses, as all they that have no freehold



frechold, or have frechold in Ancient demesne, and all women having frechold or no frechold, and men within the age of one and twenty years, &c. And it appeareth by the Treatise De modo tenendi Parliament, &c. that the Priors of the Clergy should appear, cum presentia eorum sit necessaria (which proveth that they were voiceless Abbots only) and having no voices, and so many learned Bishops having voices, their presence is not now holden necessary.

It is to be observed that in the Writs of Parliaments to the Bishops (being Lords Ecclesiastical secular) they are named by their Christian names, and name of their office; as, Rex, &c. Reverendissimo in Christo patri Johanni eadem gratia Archiepiscopo Cantuar. or Rex, &c. Reverendo in Christo patri Johanni Episcopo Norwicens. &c. But if the Surname be added it makes not the Writ vicious.

But the Abbots and Priors being Lords of Parliament, religious and regular, might be named by the name of their office only, as, Rex dilecto tibi in Christo Abbati Sancti Edmondi de Bury, &c.

A Duke, a Marquis, an Earl, and Viscount are regularly named by their Christian names, and the names of their dignities, and rarely (yet sometimes) by their Surnames; nor are they named by their Knighthood, if they have any, but rarely. If a Baron be a Knight, he is regularly named by his Christian name, Surname, and by Miles, or Chivalier, and his Barony. If he be no Knight, then he is named by his Christian name, and the name of his Barony; but if the Surname be added, it maketh not the Writ vicious. And this holdeth as well where the Baron taketh his dignity of a place as where he taketh it of his Surname; but where the Surname is dignified, there to make a formal Writ, it is good to add the place of his Barony.

Of ancient time the Temporal Lords of Parliament were commanded by the Kings Writ to appear, In fide & homagio, quibus nobis tenemini, and in the Reign of E. 3. in fide & ligeancia, and sometime in fide & homagio, but at this day constantly in fide & ligeancia, because at this day there are no feodal Baronies, in respect whereof homage is to be done, which in 21 E. 3. was the true cause of this alteration.

The Ecclesiastical Barons secular or regular were commanded by the Kings Writ to be present, in fide & dilectione, quibus nobis tenemini, as the Bishops are at this day.

We find in the Rolls of Parliament a Writ in Anno 23 R. 2. and successively in every Parliament until and in the fifth year of H. 6. amongst the Barons that came to the Parliament, it is said Magistro Thomæ de la Warre, and some say that the addition of Magister, was to distinguish him from them that were Knights: as in the Roll of 1 E. 4. amongst the Barons it is said, Johanni de Audely armigero, for that the rest of the Barons (saving himself) and the Lord Clynton were Chivaliers. And others do hold that he was of the Clergy before the dignity descended to him, and in that respect he was called Magister.

In the Roll of 5 H. 5. and in many succeeding Rolls we find Baro applied to the Lord of Greytstock, as Radulpho Baroni de Greytstock, and Johanni Baroni de Greytstock, and to few other.

In many Rolls we find the Barons that were Knights, named Chivaliers, wherein we observed, that they liked to be called Chivaliers rather than Milites after the legal word (for Eques auratus is not used in Law.) For example, In anno 1 E. 4. Edmundo Grey de Ruthin Chivalier, &c. and under subscribed thus, Milites omnes, exceptis Johanne de Audely Armigero, & Johanne Domino de Clynton. And in 3 E. 4. all the Barons (saving the Lord Scales) have the additions of Chivaliers, and subscribed thus, Equites aurati omnes præter dominum Scales. And in 3 E. 4. all the Barons have the addition of Chivaliers, and therefore subscribed thus, Equites aurati omnes: Hereby and by many others it appeareth that the Barons, if they were Knights, were so named; and that they were not named Chivaliers unless they were Knights. But in the Reign of H. 8. and

12 E. 3. br'e 480.

21 E. 3. br'e 342.

32 E. 3. br'e 291.

7 H. 6. 27.

21 E. 4. 15.

For these regular

Lords of Parlia-

ment, and when

they ceased, see

hereafter pa.

7 E. 4. br'e 163.

7 H. 6. 29.

11 E. 3. br'e 473.

11 E. 3. tit. Br'e

473.



since, Barons are named Chivaliers in the Writ of Summons, though they be no Knights.

De Baneretto, &  
unde.

22 E. 3. 18. tit.  
Challenge, 119.

Baner legally Banerium, vexillum, Banerher: unde Banerherius or Banerius, i. Baro, vexillarius major, & Banerrettus a diminutive of Banerius, vexillarius minor. A Baron is called Banerherius or Banerius of the Baner, (being the Ensign of his honour) serveth for a guide and direction: so the Baron observing the end of his Nobility should be an example and guide to others, as well in war as in peace, in all notable habilities and vertues, and so of the Banerret: both the Baron and the Banerret hath one kind of Baner: for the Banerret is created in the field in the Kings Host, and (amongst other things) by cutting the sharp point of his Pennon, and making it a Baner, i. Vexillum Baronis: so as the Banerret hath the Baner, but not the dignity of the Baron. And this doth notably appear by the case in 22 E. 3. the very words of which resolution I will first set down, and then the effect, Un fuit challenge purceo que il fuit a Baner, & non allocatur: car sil soit a baner, & ne tient per Barony, il ferra in Affise. That is, one was challenged because he had the Baner and was a Banerret, & non allocatur by the rule of the Court, because albeit he had the Baner, yet ne tient per Barony, that is, he was no Baron of Parliament.

Nota seriem temporis, John Coupland a valiant Leader in Anno 20 E. 3. near Durham, at Nevils Castle, took in aperto prælio, David the second, King of Scots; for which King E. 3. created him Knight Banerret, and gave him lands and livings, and in 22 E. 3. the case in Law fell out.

For this order of Knighthood see Camdens Britannia 124. and for this case of Sir John Coupland, Camden in Linc. pag. 618. See 35 H. 6. fo. 46. Where the challenge was, that he was a Banerret, a Lord of Parliament. See 48 E. 3. 30. 48 Ass. pl. ultimo. Lib. 6. fo. 55. But Sir John Coupland was not the first Banerret that England had, as \* some have thought, and was with us before the Reign of E. 3. for in Pelle exitus anno 8 E. 2. in Scaccario Johannes de Cronilewele Banerrettus. And ex compoto Garderobæ Anno 9 E. 2. Nicholaus de Gray was declared by Writ of E. 2. to be de familia regis tanquam Banerrettus, both for his precedency and saltery.

\* Speed.  
See hereafter,  
pag.

For summoning of the Commons a Writ goeth out to the Lord Warden of the Cinque Ports for the election of the Barons of the same, who in Law are Furgesses, and to every Sheriff of 52 Counties in England and Wales for the choise and election of Knights, Citizens and Furgesses within every of their Counties respectively.

### The beginning of the Parliament.

Rot. Parl. 3 H. 6.  
nu. 1.  
H. 6. sat in Parliament when he was 3 or 4 years old, and so did he in the 6 and 8 year of his Reign.  
The Royal Person represented two ways.  
a Rot. pat. An. 24.  
E. 3. m. 18.  
The Patent of the Gardianship.

See Rot. Parl.  
25 E. 3. nu. 10.

At the return of the Writs the Parliament cannot begin but by the Royal presence of the King either in Person or by Representation. By Representation two ways, either by a Guardian of England by Letters Patents under the Great Seal when the King is in remotis out of the Realm: or by Commission under the Great Seal of England to certain Lords of Parliament representing the person of the King, he being within the Realm in respect of some infirmity.

a The patent of the Office of a Gardien of England reciteth his speedy going beyond Sea, or in remotis, or urgent occasions and the cause thereof. Nos quod pax nostra tam in nostra absentia quam presentia inviolabiliter observetur, & quod fiat communis justitia singulis conquerentibus in suis actionibus & querelis, de fidelitate dilecti & fidelis nostri Edwardi ducis Cornubiæ, & comitis Cestræ filii nostri primogeniti plenarie confidentes, constituimus ipsum custodem dicti regni nostri ac locum nostrum tenent' in eodem regno quamdiu in dictis transmarinis partibus moram fecerimus, vel donec inde aliud duxerimus. (And this is that capitalis Justiciarius mentioned in Mag. Carta cap. 11. when the King is extra regnum) with a clause of assistance. But yet if any Parliament is to be holden, there must be a special Commission to the Gardien, to begin the Parliament, and to proceed therein: but the Telle of the Writ of Summons shall be in the Gardiens name.



A Parliament was holden in quinti quinto, viz. anno 5 H. 5. before John Duke of Bedford, Brother and Lieutenant to the King, and Gardien of England, and was summoned under the Teste of the Gardien or Lieutenant [\* It is enacted, that if the King being beyond the Seas, cause to summon a Parliament in this Realm, by his Writ under the Teste of his Lieutenant: and after such summons of Parliament gone out of the Chancery, the King arriveth in this Realm: that for such arrival of the same King such Parliament shall not be dissolved, but the Parliament shall proceed without new summons. ]

a In 3 E. 4. a Parliament was begun in the presence of the King, and prorogued until a further day: and then William Archbishop of York, the Kings Commissary by Letters Patents, held the same Parliament, and adjourned the same, &c. The cause of the said Prorogation was, for that the King was enforced to go in person into Gloucestershire to repress a Rebellion there.

As hath been said, the Kings person may be represented by Commission under the Great Seal to certain Lords of Parliament authorizing them to begin the Parliament, and both the Gardien and such Commissioners do sit on a form placed near to the degrees that go up to the Cloth of Estate.

And in 28 Eliz. the Queen by her Commission under the Great Seal bearing date the 28 of October anno 28, reciting that she for urgent occasions could not be present in her Royal person; did authorize John Whitgift Archbishop of Canterbury, William Baron of Burghley Lord Treasurer of England, and Henry Earl of Derby, Lord Steward of the Household then being, Ad inchoandum, &c. tenendum, &c. & ad procedendum, &c. & ad faciend' omnia & singula, &c. nec non ad Parliamentum adjornandum & prorogandum, &c. which Commission is entred in hæc verba, in the Journal Book in the Lords House, and in the upper part of the page above the beginning of the Commission is written, Domina Regina representatur per Commissionarios, viz. &c. The 29 day of October, the said Commissioners sitting on a form before the Cloth of Estate after the Commission read, adjourned the Parliament until the 15 of February following, &c. And this Parliament began the 29 of October, and not the 15 of February, wherein the printed Book is mistaken, for then the Parliament begun, and was prorogued.

Thus much shall suffice, when the Kings person shall be represented.

But when the Parliament shall not begin at the day of the retozne, but for certain urgent causes then to be prorogued until another day, and then to be holden before the King, there is a ready way for the effecting thereof, and that is by Writ Patent under the whole Great Seal, reciting the Writ of Summons, and to bear Teste before the retozne thereof, and signed above with the Kings sign Manual, and directed Prælati, magnatibus, proceribus hujus regni, ac militibus, civibus, & burgensibus convocatis & electis ad hoc Parliamentum pro quibusdam causis & considerationibus, &c. to prorogue the Parliament to a certain day, and at the retozn of the Summons, this Writ being read in the Upper House before certain of the Lords of Parliament, and of the Commons there assembled, and prorogation made accordingly, the Parliament is prorogued: And this was so done in Anno 1 Eliz. the retozn of the Summons of Parliament being the 9 of October, and by such a Writ it was prorogued until the 25 of February following, at what time in judgment of Law the Parliament did begin, and was holden, and not on the 9 of October as it was adjudged. A like prorogation was made by the Queens like Writ of the Parliament holden Anno 5 Eliz. at both which days of prorogation, the Parliament did hold before the Queen her self, until the dissolution of the same, which Writs are entred in hæc verba in the Journal book.

*What is to be done the first day of the Parliament.*

On the first day of the Parliament, the King, or most commonly the Lord Chancellor, or Keeper of the Great Seal in the presence of the Lords and Commons do shew the causes of the calling of his High Court of Parliament, but the

Rot. Parl. 5 H. 5. nu. 1.

\* 8 H. 5. cap. i. in print.

*Nota, Quia in presentia majoris cessat potestas minoris.*

And the Letters Patents of this office is with a

*quandiu in partibus transmarinis moram fecerimus, &c. ut sup.*

Rot. Parl. 3 E. 4.

a Rot. i. 13, 14.

Like Letters Patents to the Earl of Warw. in the same Parliament. nu. 15. Parl. 28 Eliz.

See an excellent president hereof,

Rot. claus. Anno

8 E. 2. 7. Sept. m.

26. & 1 pars pat.

An. 8 E. 2. m. 26.

with a commandment of attendance.

Simile 10 E. 2.

2 pars pat. m. 20.

13 E. 3. nu. 1.

Stat. 2. in absentia Gardiani Angliæ.

Prorogued  
Writ Patent.

Dier 3 El. 203. a.

And herein the printed book of Statutes erreth, for here the Parliament begun not.



22 E. 3. Sir *William Thorpe* Chief Justice.

a 17 E. 3. nu. 7, 8. Sir *Bart. de Burghersh*.

25 E. 3. nu. 16.

27 E. 3. nu. 2.

28 E. 3. nu. 1.

29 E. 3. nu. 8.

Sir *William Shurliff* Chief Just.

45 E. 3. nu. 8.

Sir *Robert Thorpe* Chief Justice.

47 E. 3. nu. 2.

Sir *Jo. Knivet* Chief Justice.

50 E. 3. nu. 2.

Sir *Jo. Knivet* Chief Justice. 51 E. 3. nu. 13. by Sir *Robert Ashton* the Kings Chamberlain. b Parl. 36 E. 3. nu. 1. *Simon Langham* B. of Ely Chancellor. c And so it was done ever after. 5 R. 2. nu. 2. The causes of Parliament were in ancient time shewed in the Chamber de peint, or St. Edwards Chamber. d Parl. 27 E. 3. nu. 2.

King may appoint any other: as many times the Chief Justice of England, and sometimes a some other, as may appear in the Parliament Rolls, only one I will transcribe.

b At this day Sir Henry Green the Kings Chief Justice (although the Lord Chancellor were present) in the presence of the King the Lords and Commons, declared the causes of the Parliament c in English, viz. for redress of matters touching the Church, for observation of the peace, for the affairs of Scotland, for the enhancing the price of Wool, &c. d But at the next meeting Simon Langham Bishop of Ely shewed the causes of Parliament, and in the end, he did in the Kings name require the Commons to make choice of a learned and discreet man to be their Speaker: and when a Bishop was Lord Chancellor, he took a Text of Scripture which he repeated in Latin, and discoursed upon the same. But when a Judge was Lord Chancellor, he took no Text, but in manner of an Oration shewed summarily the causes of the Parliament.

### The Election of the Speaker.

It is true, the Commons are to chuse their Speaker: but seeing that after their choise the King may refuse him, for avoiding expence of time and contestation, the use is (as in the Conge de ellier of a Bishop) that the King doth name a discreet and learned man whom the Commons Elect: but without their Election no Speaker can be appointed for them, because he is their mouth, and trusted by them, and so necessary, as the House of Commons cannot sit without him: and therefore a grievous sickness is a good cause to remove him, as in 1 H. 4. John Chenye Speaker chosen and allowed, was for sickness, so as he could not serve, discharged, and Sir John Doreward chosen in his place: and so was William Sturton, after he was chosen and allowed Speaker, removed for grievous sickness, and Sir John Doreward chosen in his place. At the Parliament holden in 15 H. 6. Sir John Tirrell Knight was chosen and allowed Speaker, and for grievous sickness removed, and William Beerly Esq; chosen in his place, &c.

Sickness cause to remove the Speaker.

1 H. 4. nu. 62, 63.

Rot. Parl. 1 H. 5.

nu. 9, 10, 11.

Rot. Parl. 15 H. 6.

nu. 10. & 27.

Sickness no cause to remove a Member of the House of Commons. 38 H. 8. Parl. Br. 7.

But sickness is no cause to remove any Knight, Citizen or Burghers of the House of Commons: So note a diversity between the Speaker and any other of the House of Commons; and this diversity being not observed begat an error by some opinion in 38 H. 8. tit. Parliament Brook 7. for continual experience is to the contrary.

### The Presentment of the Speaker.

What the Speaker shall do when he is chosen.

The King may allow of his excuse, and disallow him, as Sir John Popham was.

28 H. 6. nu. 6.

The Protestation of the Speaker.

When the Commons have chosen their Speaker, the person elected standing in his place, disabling himself to undergo so weighty a charge, as in his discretion he thinks fit, desires them to proceed to a new choise: which being denied, and he set in the Chair, then he prayeth them to give him leave that he may disable himself to the King: after this they present him to the King in the Lords House; where after he hath disabled himself to speak before the King, and for the whole body of the Realm, and made humble suit to the King, lest by his insufficiency the business of the Realm may be hindered to be discharged, and a more sufficient man to be chosen: if he be allowed by his Majesty, then he maketh a Protestation consisting on three parts: First, that the Commons in this Parliament may have free Speech, as of right and by custom they have used, and all their ancient and just privileges and liberties allowed to them. Secondly, that in any thing he shall deliver in the name of the Commons (if he shall commit any error) no fault may be arrected to the Commons, and that he may resort again to the Commons for declaration of their true intent, and that his error may be pardoned. The third is, that as often as necessity for his Majesties service, and the good of the Commonwealth shall require, he may by the direction of the House of Commons have access to his Royal Person.

This



This is in the Parliament Rols called a Protestation in respect of the first part, the nature whereof is to be an exclusion of a conclusion, and herein that the House of Commons be not concluded to speak only of those things which the King or Lord Chancellor, &c. hath delivered to them to be the causes of the calling of this Court of Parliament, but in a Parliamentary course of all other arduous and urgent business, which principally consist in these five Branches, as it appeareth in the Writs of Summons to the Lords Spiritual and Temporal, viz.

*The matters of Parliament.*

1. Touching the King. 2. The state of the Kingdom of England. 3. The defence of the Kingdom. 4. \* The state of the Church of England: and 5. The defence of the same Church. And this appeareth by express words in the Parliament Writ in these words: Pro quibusdam arduis urgentibus negotiis, nos, statum, & defensionem Regni nostri Angliæ, & Ecclesiæ Anglicanæ concernentibus quoddam Parlamentum nostrum, &c. teneri ordinavimus, &c. And these words [the state and defence of the Kingdom] are large words, and include the rest. And though the state and defence of the Church of England be last named in the Writ, yet is it first in intention, as it appeareth by the title of every Parliament: As for example, a To the honour of God and of holy Church, and quietness of the people, &c.

Now for as much as divers Laws and Statutes have been enacted and provided for these ends aforesaid, and that divers mischiefs in particular, and divers grievances in general concerning the honour and safety of the King, the state and defence of the Kingdom and of the Church of England might be prevented, an excellent Law was made Anno 36 E. 3. which being applied to the said Writs of Parliament doth in few and effectual words set down the true subject of a Parliament in these words. For the maintenance of the said Articles and Statutes, and redress of divers mischiefs and grievances which daily happen, a Parliament shall be holden every year, as another time was ordained by a \* Statute.

Before the Conquest Parliaments were to be holden twice every year, Celeberrimus autem ex omni satrapia bis quotannis Conventus agitur. King E. 1. kept a Parliament once every two years for the most part, and now it is enacted, that a Parliament shall be holden once every year.

The Romans vanquished our Ancestors, the ancient Britains, for that they assembled not, they consulted not in common with them, nor Common Councils, as Tacitus in vita Agricolæ saith, Nec aliud adversus validissimas gentes pro nobis utilius, quam quod in \* commune non consulunt. Rarus ad propulsandum commune periculum conventus: Ita dum singuli pugnant, universi vincuntur. But to return to the matters of Parliament.

And it is enacted and declared by Authority of Parliament in Anno 4 H. 8. That all suits, accusations, condemnations, executions, fines, amerciements, punishments, corrections, charges, and impositions at any time from thenceforth to be put, or had upon any member, either of that present Parliament, or at any Parliament at any time after that Act to be holden, for any Bill, \* speaking, reasoning, or declaring of any matter or matters concerning the Parliament, to be communed, or treated of, be utterly void and of none effect. Which latter branch is general. Now what matter or matters concern the Parliament appear before. And this clause of the Act of 4 H. 8. is declaratory of the ancient Law and custom of the Parliament.

And this doth not only appear by the Writs directed to the Lords of Parliament, but by the Writs for election of the Commons. For example, The Writ to the Sheriff of Norfolk for election of the Knights, Citizens, and Burgeses within that County is, Rex Vicecomiti Norff. Salutem. Quia nos de avisamento & assensu concilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem Regni nostri Angliæ, & Ecclesiæ Anglicanæ concernentibus quod-

Rot. Par. 1 R. 2. nu. 15, &c. Rot. Par. 1. 2 H. 4. n. 8. Sir Arnold Savag. Speaker. 5 H. 4. n. 8. 7 H. 4. nu. 11. Sir John Tibetot. Speaker, &c. ibid. nu. 30. 1 H. 5. n. 7. 2 H. 5. n. 10. And so in succeeding times called a Protestation.

Rot. Par. 9 H. 4. An Act intituled Indemnity de Seigniors & Commons, not printed.

\* See W. 1. An. 3 E. 1. in the Preamble, the state of the Realm, and of holy Church. And the 2. part of the Institute, W. 1. c. 1. & in the Preamble \* 36 E. 3. 50 E. 3. &c.

36 E. 3. c. 10. Parliaments ought to be holden once in a year.

\* 4 E. 3. cap. 14. Int. leges Edgar cap. 5.

Tacitus in vita Agricolæ, p. 306. \* Nota, Commune concilium. Conventus.

4 H. 8. c. 8.

\* Neq; timida probitas, neque improba fortitudo Reipublicæ est utilis.

The like Writ to all the other Counties, saving in Wales they have but one Knight and one Burgeses.



*a* Nota, ad faciendum & consentiendum.

And every City two Citizens, and out of every Burgh two Burgeses.

*b* Nota, super negotiis antedictis.

dam Parliamentum nostrum apud. &c. teneri ordinaverimus, & ibidem cum Prelatis, magnatibus, & proceribus dicti Regni nostri colloquium habere & tractatum: ipsi Vicecom. Norff. precipimus firmiter injungend<sup>o</sup>, quod facta proclamatione in proximo comitatu tuo post receptionem ejusdem brevis, duos milites gladiis cinctos, &c. eligi faceret, &c. *a* ad faciendum & consentiendum hiis quæ tunc ibidem de communi concilio nostro Angliæ (favente Deo) contingerent ordinari *b* super negotiis antedictis, ita quod pro defectu potestatis hujusmodi, seu propter improvidam electionem Militum, Civium & Burgesium prædict<sup>o</sup> dicta negotia nostra infecta non remanerent quovismodo. And this power extendeth equally to all Knights, Citizens and Burgeses of Parliament.

*What the Speaker shall do after his allowance.*

After the Commons with their Speaker are come from the Lords house, and that the Speaker is set in the Chair, then he desireth the Commons, that seeing they have chosen him for their mouth, that they would favourably assist him in their arduous and important affairs: and that he will do them the best service he can with all diligence and faithful readiness, or to the like effect.

*The Writs of Summons of Parliament, which are to be found in the close Roll from time to time.*

Seeing the Summons of Parliament (as hath been said) is by the Kings Writs, which tend to the beginning of the Parliament, it shall be necessary to speak somewhat of those Writs. And it is to be observed, that the substance of those Writs ought to continue in their original essence without any alteration, or addition, unless it be by Act of Parliament. For \* if original Writs at the Common Law can receive no alteration or addition but by Act of Parliament, à multo fortiori, the Writs for the Summons of the highest Court of Parliament can receive no alteration, or addition, but by Act of Parliament. Where the Writs of Summons issued out of the Chancery, and were returnable in the Court of Parliament, the return thereof could not be altered, and returnable into the Chancery, but by Act of Parliament. And because the words of the Writ for election of Knights, &c. were, *d* duos milites gladiis cinctos, &c. it required an Act of Parliament, that notable Esquires might be eligible.

\* Braet. l. 5. f. 413.  
Britton 122, 227.  
Fleta l. 2. cap. 12.  
W. 2. c. 15. 1. part  
of the Inst. § 101.  
Epist. ad librum.  
c 7 H. 4. c. 25. Rot.  
Par. § R. 2. n. 1, 2,  
&c. they be now  
returned into the  
Chancery, and  
kept in the office  
of the Clerk of the  
Crown there.

*d* 23 H. 6. cap. 15.  
Parl. 6 H. 3. This  
was called *indolentum*  
*Parliamentum*  
lack-learning Par-  
liament. Rot. Par.  
46 E. 3. n. 13. § R.  
2. c. 4. 7 H. 1. c. 15.  
See hereafter  
more of this mat-  
ter, in this Chap.  
p. and who be  
eligible, &c.  
\* Nota. W. 1. c. 5.  
§ E. 1.

Walsingham saith, that in Anno Domini 1404. which was anno 6 H. 4. in the Writs of the Summons of Parliament, there was added by the King a commandment in the Writ, that no Lawyer should be returned Knight or Burgess, (but the Historian is deceived, for there is no such clause in those Writs, but it was wrought by the Kings Letters by pretext of an Ordinance in the Lords House, in 46 E. 3.) But at the next Parliament in 7 H. 4. at the grievous complaint of the Commons, being interrupted of their free election by those letters (which were Letters of Justice and right) it is, amongst other things, enacted, That elections should be freely, and indifferently made, notwithstanding any prayer, or commandment to the contrary, i. line prece, by any prayer or gift, & sine præcepto, without commandment of the King by Writ, or otherwise, or of any other; which was a close, and prudent salve, not only for that soze, but for all other in like case, and it is but an Act declaratory of the ancient Law and custom of Parliament.

*Petitions in Parliament.*

On the first day of the Parliament, after the Commons be departed to choose their Speaker, then are certain Justices Assistants and Civilians Masters of the Chancery Attendants, viz. four Justices, and two Attendants appointed



appointed to be receivers of the Petitions of England, Ireland, Wales, and Scotland, and that those that will deliver their Petitions, are to deliver them within six days following. At that time there are other Judges and Civilians attendants, viz. three Judges and two Attendants appointed to be receivers of Petitions for Gascoign and other \* places beyond the Seas, and of the Isles, and that they deliver their Petitions within six days, &c.

Receivers of Petitions of England, Ireland, Wales, Scotland.  
\* Gascoign, Guyan, Poyers, Normandy, Anjou, &c.

Then are appointed of the Nobility Lords of Parliament and Bishops, viz. Six of the Nobility, and two Bishops, to be triers of the said Petitions for England, Ireland, Wales, and Scotland, they together or four of the Prelates and Lords aforesaid, calling to them the Kings learned Council, attendants in Parliament when need should be, and to sit in the Chamber of the Treasury. The like appointment of the Nobility and Bishops to be triers of the Petitions for Gascoign, and other places beyond the Seas, and of the Isles, and a place appointed for their sitting, calling to them the Kings learned Council when need should be. For Petitions to be preferred into the Lords House in Parliament for the Countries and places aforesaid, this was the ancient constant Law, and custom of the Parliament continued until this day. Wherein these three things are to be observed; First, The extent of the Jurisdiction of the Parliament of England. Secondly, That for expediting of causes, there should be receivers of all Petitions, both of Judges of the Realm for their knowledge in the Laws of the Realm, and of Civilians attendants, who might prepare and inform the triers, being Lords of Parliament, of the quality of those Petitions. Thirdly, That there should be of the Lords Spiritual and Temporal triers of those Petitions, to try out whether they were reasonable, and good and necessary to be offered and propounded to the Lords.

Triers of Petitions.

Of Petitions in Parliament some be of Right, some of Grace, and some mixt of both: some preferred by the Lords Spiritual, some by the Lords Temporal, some by the Commons, some by the Lords and Commons. Extra Parliamentum nulla petitio est grata, licet necessaria; In Parlamento nulla petitio est ingrata, si necessaria. *a* All Petitions ought to contain convenient certainty and particularity, so as a direct answer may be given to them.

*a* Rot. Par. 12 E. 1 f. 2. & 16. 50 E. 3. n. 125. 64. 81. 17 E. 3. n. 55. 56. 36 E. 3. n. 35. 43 E. 3. n. 19. 45 E. 3. n. 12. 47 E. 3. n. 16. 1 R. 2. n. 122. &c.

*b* Petitions being timely preferred (though very many) have been answered by the Law and custom of Parliament before the end of the Parliament. This appeareth by the ancient Treatise, De modo tenendi Parliamentum, &c. in these words faithfully translated in a fair and ancient Manuscript, for Bills and Petitions. The Parliament ought not to be ended while any Petition dependeth undiscussed, or at the least, to which a determinate answer is not made.

*b* Rot. Par. 17 E. 3. n. 60. 24 E. 3. n. 60. 50 E. 3. 212. 1 R. 2. 134. &c. 2 R. 2. n. 38. 1 H. 4. 132. 2 H. 4. 3. 25. 3 H. 4. 113. 23 E. 3. n. 12. 25 E. 3. n. 12. 26 E. 3. n. 31. 50 E. 3. n. 52. c 36 E. 3. cap. 10.

And in the Parliament Rolls, there is a Title towards the end of the Parliament, The Petition of the Commons, &c. with their answer entered and recorded in the Roll of Parliament. *c* And one of the principal ends of calling of Parliaments is for the redress of the mischiefs and grievances that daily happen. \* Innovations and Novelties (sometime termed in Rolls of Parliament Novelties) in Parliamentary proceedings are most dangerous, and to be refused. *d* And sometime the King doth answer the Petition of the Commons by the assent of the Prelates, Counts, Barons, and Commons themselves: such unity hath been for the common good in Parliaments in former times.

18 E. 3. cap. 1. 4. 50 E. 3. n. 17. Lions case. Rot. Par. 1 H. 5. n. 17. 13 H. 4. n. 9. 11 H. 4. cap. 6. \* Innovations and Novelties. *d* 35 E. 3. Rot. 19. &c.

### Appointment of Committees of Grievances, &c.

The Commons being the general Inquisitors of the Realm, have principal care in the beginning of the Parliament to appoint days of Committees, viz. of grievances (both in the Church and Commonwealth), of

*e* Brañon. Gravus est æternam quam temporal: m

ludere majestatem. And it appeareth by the Statute of 36 E. 3. cap. 10. That it is one of the principal ends of the Parliament, to redress grievances. And the words of the Writ of Parliament be *De arduis & urgentibus negotiis, statum & defensionem Ecclesiæ Anglicanæ concernentibus*.



Courts of Justice, of privileges, and of advancement of trade. These Committees when they meet, they elect one of them to sit in the Chair in likeness of the Speaker: the Committee may examine and vote the questions handled by them, and by one, whom they appoint, report their resolution to the House, and the House, sitting the Speaker, to determine the same by question.

*Absents, Proxies.*

21 E. 4. 50. The ancient Record, *De modo tenendi. Parl. &c. vers. finem, optime.*

Any Lord of the Parliament by license of the King upon just cause to be absent, may make a Proxy: and in the bundle of Proxies Anno 5 H. 5. it appeareth, that in those days a Spiritual Lord of Parliament might have made his Proxy to the Procurators of the Clergy, or to any other Clerk, but at this day he cannot make it but to a Lord of Parliament: but a Knight, Citizen, or Burghers of the House of Commons cannot by any means make any Proxy, because he is elected and trusted by multitudes of people.

*Of the ancient Treatise called Modus tenendi Parliamentum.*

See the second part of the Instit. Mag. Car. c. 2 p. 7. 8 See the first part of the Institutes, Sect. 164. fol. 110. See the second part Instit. p. 8 the Charter of King H. 1. at his Coronation having relation to *Modus tenendi Parl.* See also the Chr'e of King John anno 17 Matth. Par. 246. *per antiquum relevium, viz. hares comitis pro comite integro 100 l. hares Baronis pro Baronia integra 100 marc. & hares militis de feodo militis integro 5 l.* See Mag. Car. c. 2. \* It is justly called *antiquum relevium*, because it is according to the proportion of this ancient Modus.

Now for Antiquity and Authority of the ancient Treatise called *Modus tenendi Parliamentum*, &c. whereof we make often use in this part of the Institutes; certain it is, that this Modus was rehearsed and declared before the Conqueror at the time of his Conquest, and by him approved for England, and accordingly the Conqueror according to Modus held a Parliament for England, as it appeareth in 21 E. 3. f. 60.

After King H. 2. had conquered Ireland, he fitted and transcribed this Modus into Ireland, in a parchment Roll, for the holding of Parliaments there, which no doubt H. 2. did by advise of his Judges, being a matter of so great weight and legal. This Modus in the parchment Roll transcribed as aforesaid by H. 2. remained in Ireland, and in anno 6 H. 4. was in the custody of Sir Christopher Preston Knight, a man of great wisdom and learning, which Roll King H. 4. in the same year, De assensu Johannis Talbot Chivalier his Lieutenant there, and of his Council of Ireland, exemplified for the better holding of the Parliaments there; and in the exemplification it expressly appeareth that H. 2. did transcribe this Modus, as is aforesaid.

This Modus was seen by the makers of the Statute of Magna Carta, Anno 9 H. 3. cap. 2. concerning the reducing of the \* ancient relics of entire Earldoms, Baronies, and Knights fees according to such proportions as is contained in the Modus, which they could not have done so punctually, if they had not seen the same, whereof you may read more at large in the First part of the Institutes, Sect. 103. fol. 76. Verbo Relief. And some part of this Modus is cited in the Parliament Roll, Anno 11 R. 2. and other Records of Parliament, and upon diligent search we can find nothing against it. But many very ancient copies you may find of this Modus, one whereof we have seen in the Reign of Hen. 2. which containeth the manner, form and usage of Gilbert de Scrovel Marshal of England, in what manner he occupied and used the said room and office in all his time, and how he was admitted, &c. at the Coronation of H. 2. and of his Knight Marshal, and other inferior officers, &c. and adjoyned therunto, and of the same hand is this Modus, as fit for him to know.

But lest it might be said to me, as it was once said to an Orator, who having spoken much in commendation of Hercules: It was demanded of one that stood by, *Quis vituperavit? Ad quod non fuit responsum.* But now let us return to Proxies.

At the Parliament holden An. 1 Eliz.

A Lord of Parliament by license obtained of the Queen to be absent, made a Proxy to three Lords of Parliament, *Conjunctim & divisim dans eis potestatem tractandi, tractatibusque auxilium & consilium impendendi, atque statutis & ordinationibus, quæ inactitæ contigerint, consentiendi, Ita quod non sit melior conditio occupantis.* And one of the Procurators gave consent to a Bill, and the

the two others said, not content. And first it was by order of the Lords debated amongst the Judges and Civilians attendants, and conceived by them that this was no voice, and the opinion was affirmed by all the Lords of Parliament seriatim. Another question was moved at that time, that if a Lord of Parliament make a Pryor, and after come into the Lords House of Parliament, and sit there without arguing, consenting or speaking any thing: and it was conceived by the Judges and Civilians, that his sitting there without saying any thing was a revocation in Law of his Pryor; à Fortiori, if he moved or spake to any matter there propounded, and their opinion was resolved by the Lords seriatim. And these were the Pryors of the Bishop of Bath, the Lord Howard Chamberlain, and of the Lord Windsor.

King John in the 13 year of his Reign being in extreame fear of both the Pope and the French King, and especially of his own Subjects ( and what is fear, saith Solomon, but a betraying of the succours that reason offereth? ) sent Ambassadors to Admiralius Marmelinus great Emperour of Turky, Sir Thomas Herrington and Sir Ralph Nicholson Knights, and Sir Robert of London Clerk, nuntios suos secretissimos, to offer to be of his Religion, and to make his Kingdom Tributary to him, and he and his Subjects to be his Vassals, and to hold his Kingdom of him. But that Infidel great Prince, as a thing unworthy of a King, to deny his Religion, and betray his Kingdom, utterly refused to accept. King John in the 14 year ( the next year ) of his Reign by his Charter 15 May, by the threats and perswasion of the Popes Commissary Pandulphus surrendered his Kingdoms of England and Ireland to Pope Innocent the Third, cum communi consilio Baronum, ( as he inserted therein ) and that thence forward he would hold his Crown as feodary to the Pope, paying for both his Kingdoms 1000 marks. Whereupon doing homage and fealty to the Pope by the hand of Pandulphus, and taking off the Crown from his Head surrendered it to the Pope by Pandulphus, at whose Feet he laid also the Royal Ensigns, his Scepter, Sword and Ring; all which was afterward accepted, approved and ratified by the Pope, by his Bull which was called Bulla aurea.

Gregorius Papa petit à Rege E. 1. per literas annum censum 1000 merc. Rex respondet se sine praelatis & proceribus regni non posse respondere, & quod Jurejurando in Coronatione sua fuit restrictus, quod jura regni sui servaret illibata, nec aliquid quod Diadema tangat regni ejusdem absque ipsorum requiritur consilio faceret.

In anno 40 E. 3. the Pope by his Ambassadors demanded of the King Homage for the Kingdom of England and Land of Ireland, and the arrearages of 1000 marks by the year, granted by King John to Pope Innocent the Third and his Successors, and threatened that if it were not paid, the Pope was resolved to proceed against the King. Whereupon the King in the same year calleth his Court of Parliament, and in the beginning of that Parliament ( saith the Record ) Fuit monstre a les Prelates, Dukes, Countes, Barons, les Chivaliers des Counties, Citizens & Burgeses en le presence le Roy per le Chancelor, coment ils avoient entendue les causes del summons del Parliament en general, mes la volonte le Roy fust que les causes feussent montres a eux en especial: lour disoit coment le Roy avoit entendue que le Pape per force dun fait quel il dit que le Roy Johan fesoit au Pape de luy faire homage pur le Realme d'Engleterre & la terre d'Irland, & que per cause du dit homage quil luy devoit payer chescun an perpetuellement mille marcs, est en volonte de faire proces devers le Roy & son Roialme pur le dit service & cens recoverir; de quoi le Roy pria as dits Prelats, Dukes, Countes & Barons lour avys & bon conseil, & ce quil enterroit, en case que le Pape vorroit proceder devers luy, ou son dit Roialme per celle cause: & les Prelats requeroient au Roy quils se purroient per eux soul aviser & respondre lendemain, queux Prelatz le dit lendemain adeprimes per eux mesmes, & puis les autres Dukes, Countes, Barons & Gentz respondirent & disoient, que le dit Roy Johan ne nul autre purra mettre luy, ne son Roialme, ne son people

Lib.Sap. 17. 12.

Mat.Par.pa.233.

*Quere. vid. Rapin's History*Rot.Cl.An. 3 E. 1  
m.9. in Schedula.Rot.Par. 40 E. 3.  
nu.8. An Act never yet printed.

I have thought good to transcribe it in proprio Idiomate.



No King can put himself nor his Realm, nor his people, in such subjection without assent of the Lords and Commons in Parliament, and therefore if King John had done it by the Common Council of his Barons, as his Charter purported, yet it is bound not, for that it was not done in Parliament by the King, the Lords and Commons: and albeit it might (as here it appeareth, it cannot be done without Authority of Parliament) yet it is *Contra legem & consuetudinem Parliamenti*, to do such a thing, as by the next Record in 42 E. 3. appeareth.

\* Ro. Par. 42 E. 3. nu. 7. *Lex & consuetudo Parliamenti*

en tiele subjection sanz assent & accorde deux : & les communes sur ce demandez & avisez respondirent en mesme le manere ; sur qui feust ordeine, & assentu per commune assent en manere quensuyt. En se present Parlement tenuz a Westm Lundy profchein apres la invention de la Sainte Croice lan du Reign le Roy Edward quarantisme, tant sur lestat de Sainte Eglise, come des droitz de son Roialme & de sa Corone maintenir, entre autres choses estoient monstrez coment ad este parlee, & dit que le Pape per force dun fait quele il dit que le Roy Johan, jadis Roy d'Engleterre fesoit au Pape au perpetuite de luy faire homage pur le Roialme d'Engleterre & la terre de Irland, & per cause du dite homage de luy rendre un Annuel rent : ad este en volute de faire processe devers le Roy pur les ditz services & ceus recoverir ; la quelle chose monstree as Prelats, Ducs, Countes, Barons, & la commune pur ent avoir lour avys & bon conseil, & demandee de eux ce que le Roy enerra en case que le Pape vorroit proceder ou rien attempter devers luy ou son Roialme per celle cause ? Queux Prelats, Ducs, Countes, Barons communes en sur ce plein deliberation responderont & disoient d'une accorde, que le dit Roy Johan ne nul autre purra mettre luy ne son Roialme ne son people en tiel subjection sanz assent de eux, & come piert per plusieurs evidences, que si ce feult fait, ce feult fait sanz leur assent, & encontre son serement en sa Coronation : Et outre ce les Ducs, Countes, Barons, Gents & Communes accorderent & granterent que en case que le Pape se afforceroit ou rien attemperoit per proces, ou en auter manere de fait de contreindre le Roy ou ses Subjects de per faire ce que dit qu'il voet clamer telle partie quilz resliront & contresterront ove toute leur puissance.

This Noble and prudent King took the fairest and surest way to give satisfaction, wherof the Pope being certified, the matter ever since hath rested in quiet.

\* It is declared by the Lords and Commons in full Parliament, upon demand made of them on the behalf of the King, that they could not assent to any thing in Parliament that tended to the disherison of the King and his Crown, wherunto they were sworn. See hereafter in the case of Ireland.

## Lex & Consuetudo Parliamenti.

7 E. 2. Stat. De defensione portand. arm.

2 E. 3. ca. 3.

Rot. Par. 6 E. 3.

nu. 1. 13 E. 3.

nu. 2. 14 E. 3. nu. 2.

15 E. 3. nu. 2.

17 E. 3. nu. 3.

18 E. 3. nu. 2.

20 E. 3. nu. 1.

25 E. 3. Stat. 1.

nu. 58. 25 E. 3.

Stat. 2. nu. 5. &c.

Privy Coat or

Armour.

Games or Plays.

Rot. Par. Anno

13 E. 3. nu. 5. & 8.

\* See hereafter pa.

By the ancient Law and Custom of the Parliament a Proclamation ought to be made in Westminster in the beginning of the Parliament, that no man upon pain to lose all that he hath, should during the Parliament in London, Westminster, or the Suburbs, &c. wear any privy coat of Plate, or go armed, or that Games or other Plays of men, women, or children, or any other pastimes or strange shews should be there used during the Parliament : and the reason hereof was, that the High Court of Parliament should not thereby be disturbed, nor the Members thereof (which are to attend the arduous and urgent business of the Church and Commonwealth) should not be withdrawn.

\* It is also the Law and Custom of the Parliament, that when any new device is moved on the Kings behalf, in Parliament for his aid, or the like, the Commons may answer, that they tended the Kings estate, and are ready to aid the same, only in this new device they dare not agree without conference with their Countreies, whereby it appeareth, that such conference is warrantable by the Law and Custom of Parliament.

And it is to be observed, though one be chosen for one particular County or Borough, yet when he is returned, and sits in Parliament, he serveth for the whole Realm, for the end of his coming thither, as in the Writ of his Election appeareth, is general, ad faciendum & consentiendum hiis quæ tunc & ibidem de communi consilio dicti regni nostri (favente Deo) contigerint ordinarii super negotiis predictis. i. pro quibusdam arduis & urgentibus negotiis nos, statum, & defensionem regni nostri Angliæ & Ecclesiæ Anglicanæ concernentibus, which are rehearsed before in the Writ.

*Lex & consuetudo Parliamenti.*

And

And as every Court of Justice hath Laws and Customs for its direction, some by the Common Law, some by the Civil and Cannon Law, some by peculiar Laws and Customs, &c. So the High Court of Parliament Suis propriis legibus & consuetudinibus subistit. It is \* *Iex & Consuetudo Parliamenti*, that all weighty matters in any Parliament moved concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be determined, adjudged and discussed by the course of the Parliament, and not by the Civil Law, nor yet by the Common Laws of this Realm used in more inferior Courts; which was so declared to be *secundum legem & consuetudinem Parliamenti*, concerning the Peers of the Realm, by the King and all the Lords Spiritual and Temporal; and the like *pari ratione* is for the Commons for any thing moved or done in the House of Commons: and the rather, for that by another Law and Custom of Parliament, the King cannot take notice of any thing said or done in the House of Commons, but by the report of the House of Commons: and every Member of the Parliament hath a judicial place, and can be no witness. And this is the reason that Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the Common Laws, but *secundum legem & consuetudinem Parliamenti*: and so the Judges in divers Parliaments have confessed. And some hold, that every offence committed in any Court punishable by that Court, must be punished (proceeding criminally) in the same Court, or in some higher, and not in any inferior Court, and the Court of Parliament hath no higher.

Upon his Petition exhibited to the King, wherein the question was, whether the power which he had raised was High Treason, &c. which Petition (saith the King) let be delivered to the Justices by them to be considered. Whereupon the Lords made protestation, that the order thereof belonged to them, which was to them allowed, and they resolved it to be no Treason.

And because we have a case in 3 E. 3. 19. concerning the Law and Custom of Parliament, we have thought good to set down the Record of that case *de verbo in verbum*, and then to examine the report of the said Case, and the Opinion there delivered, wherein we shall desire the learned to consider well the Statute of 5 R. 2. Stat. 2. cap. 4. and thereupon to consider what (as that Statute speaketh) hath been done of old times, &c. And how that Act saith done, and not said.

**J**ohannes Episcopus Winton in misericordia pro pluribus defaultis. Idem Johannes Episcopus attachiat fuit ad respond' Domino Regi, de eo quare cum in Parlamento Regis apud novam Sarum nuper tent' per ipsum Dominum Regem inhibitu fuisset, ne quis ad dictum Parliamentum sommonitus ab eodem recederet sine licenc' Regis: Idem Episcopus durante Parlamento predict. ab eodem sine licentia Regis recessit in Regis contemptum manifestum, & contra inhibitionem Regis supradictam. Et unde idem Dominus Rex per Adam de Fincham, qui sequitur pro eo, dicit, quod predictus Johannes Episcopus fecit ei transgress. & contemptum predict. &c. in contempt. Regis mille librarum. Et hoc offert verificare pro Domino Rege, &c.

Et predictus Episcopus in propria persona sua venit, & defendit omnem contemptum & transgress. & quicquid, &c. et dicit, quod ipse est unus de paribus regni, & Prelatus sacros. Ecclesie, & eis inest venire ad Parliamentum Domini Regis per summonitionem &

*Ista lex ab omnibus est quærenda, à multis ignorata, à paucis cognita.*

*Blackb. 2. cap. 2. \* Rot. Par. 11 R. 2. nu. 7.*

*See the first part of the Institutes.*

*Sect. 3. Verb. En la Ley.*

*Rot. Par. 2 H. 4. nu. 11.*

*Rot. Par. 3 H. 5.*

*In le Countee de Marshals case.*

*Rot. Par. 2 H. 5. nu. 18. the Earl of Arundels case.*

*Rot. Par. 31 H. 6. nu. 26, 27, 28. Baron Thorps case.*

*5 H. 4 nu. 22.*

*The Earl of Northumberland's case*

*Vid. Rot. Par.*

*9 H. 4. Indemnity des Seigniors & Commons.*

*Pasch. 3 E. 3. coram Rege Rot. 9. in Dorf. South.*

*Nora, that this was by Writ Original.*

*The Declaration.*

*The Plea of the Bishop to the Jurisdiction of the Court.*



\* Nota hoc.

This is the allegation of the Kings Attorney.

The B. maintains his former plea to the Jurisdiction.

pro voluntate ipsius Domini Regis cum sibi placuerit. \* Et dicit, quod si quis eorum deliquerit erga Dominum Regem in Parlamento aliquo, in Parlamento debet corrigi & emendari, & non alibi in minor Cur. quam in Parlamento: per quod non intendit, quod Dominus Rex velit in cur. hic de huiusmodi transgr. & contempt. factis in Parlamento responderi, &c. Et super hoc datus est eis dies coram Rege a die Sanctæ Trin. in quindecim dies ubicunque, &c. salvis rationibus. Ad quem diem præd. Episcopus venit in propria persona sua, & datus est ei dies coram Domino Rege a die Sancti Mich. in 15 dies ubicunque, &c. in eodem statu quo nunc, &c. salvis rationibus suis, &c. Ad quem diem venit prædict. Adam qui sequitur, &c. Et similiter prædictus Episcopus in propria persona sua. Et prædictus Adam pro prædicto Domino Rege dicit, quod cum placeat ei Parliamentum suum tenere pro utilitate regni sui de regali potestate sua facit illud summoneri ubi & quando, &c. pro voluntate sua, & etiam facit prohiberi existentibus tunc ad Parliamentum, ne quis eorum abinde recedat contra prohibitionem suam, &c. absq; licentia, &c. Et si quis eorum abinde recedat contra prohibitionem, &c. in contempt. Regis, &c. bene liceat ipsi Domino Regi sumere sectam erga huiusmodi delinquentes in qua curia placeat sibi, &c. Et ex quo Dominus Rex pro voluntate sua Parliamentum suum tenet, &c. petit iudicium pro ipso Domino Rege, si idem Dominus Rex duci debeat, seu compelli ad prosequend' in hac parte alibi contra voluntatem suam, &c.

Et prædictus Episcopus dicit ut prius, quod cum aliquis deliquerit in Parlamento, ibidem debet corrigi & emendari, &c. & licet aliquis summonitus esset veniendi ad Parliamentum, & non venisset ibidem, debet puniri, per quod non intendit, quod Dominus Rex velit alibi responderi quam in Parlamento, &c. Et super hoc datus est eis dies usque in Cra. Animarum ubicunque, &c. in eodem statu quo nunc, &c. Ad quem diem venit tam prædict. Adam, qui sequitur pro Domino Rege, quam prædict. Episcopus in propria persona sua. Et datus est dies coram Domino Rege in Octab. Sancti Hillarii ubicunque, &c. salvis rationibus suis, &c. Ad quem diem prædict. Episcopus venit, & datus est ei dies ulterius coram Domino Rege in Octab. Pur. beatæ Mariæ ubicunq; &c. Ad quem diem venit tam prædictus Episcopus, quam Johannes de Lincoln' qui sequitur pro Domino Rege, & datus est eis dies ulterius coram Domino Rege a die Paschæ in quinque septimanas ubicunq; &c. Salvis rationibus, &c. Ad quem diem venit tam præd. Episcopus in propria persona sua, quam prædict. Johannes de Lincoln' qui sequitur pro dicto Domino Rege, &c. Et datus est eis dies ulterius a die Sancti Michaelis in 15 dies ubicunq; &c. salvis sibi rationibus suis hinc in dicend', &c.

And

And this is all that is in the Record, whereby it appeareth that the plea of the Bishop to the Jurisdiction of the Court after divers days given did stand, and was never over ruled agreeably to the said resolutions in former times, that Judges were not to determine matters concerning the Parliament, as is aforesaid. Touching the report of the said case, thus far forth it agreeth, that this contempt cannot be punished in any other Court then in the Kings Bench: so as the question is only for that Court. It appeareth that the reporter never saw the said Record, only took it by the ear of that which was spoken in Court ( a dangerous kind of reporting, and subject to many mistakings, for seldom or never the right case is put ) as in this case it fell out. For first, where the Record saith, that the Parliament was holden at Sarum, the report is of a Parliament holden at Salop. 2. The Report saith, that John Bishop of Winchester was arraigned, which implieth that he was indicted, &c. where he was sued by original Writ. 3. The Inhibition made by the King alledged in the Record, is not in the Report. 4. Concerning the sudden opinion of Scrope in this Report: By his opinion the Parliament it self could not have punished this contempt; for he saith, Ceux q sont Judges de Parliament, sont Judges de leur Piers, mes le Roy n'ad my pier in son terre demesin, pur q il ne poet p eux estre Judge, dunque ailors que cy ne poet estre Judge, whereas without question the Parliament might have punished this contempt: and concludeth with a rule at the Common Law, that the King may sue in what Court it pleaseth him. But matters of Parliament ( as hath been often said ) are not to be ruled by the Common Law: and it seemeth that the rest of the Judges were against Scrope, for the plea was never over-ruled, as by the Record it appeareth.

Vide per Indictamenta Termino Paschæ 1 & 2 Ph. & Mar. coram Rege Rot. 48. Informations preferred by the Attorney General against 39 of the House of Commons for departing without license contrary to the Kings Inhibition in the beginning of the Parliament; whereof six being timorous Burgeses ad redimendam vexationem submitted themselves to their Fines, but whether they paid any or very small, we have not yet found. And \*Edmond Plowden the learned Lawyer pleaded, that he remained continually from the beginning to the end of the Parliament, and took a Travers full of pregnancy: and after his plea was sine die per demise le Roign.

Mich. 3 & 4 Ph. & Mar. Rot. 36. Inter Plac. Regis & Regina.

If offences done in Parliament might have been punished elsewhere, it shall be intended that at some time it would have been put in ure. Vid. the first part of the Institutes. Sect. 108.

Now the said Informations Anno 1 & 2 Ph. & Mar. against 39 of the House of Commons follow in these words. Pasch. 1 & 2 Phil. & Mar. Regis & Regina.

Midd. ss. **M**emorand<sup>o</sup> quod Edwardus Griffyn arm<sup>o</sup> Attornat<sup>o</sup> Domino Regis & Reginae generalis, qui pro eisdem Dominino Rege & Domina Regina sequitur, venit hic in Cur<sup>a</sup> dictorum Dominorum Regis & Reginae coram ipsis Rege & Regina apud Westmonast. die Sabbathi proximi post quind<sup>o</sup> Pasch. isto eodem Termino, & dat Cur<sup>a</sup> hic intelligi & informari. Quod cum ad Parliamentum Dominorum Regis & Reginae nunc tent<sup>o</sup> apud Westmonast. Annis Regnorum suorum primo & secundo inhibitu fuit per ipsos Dominum Regem & Dominam Reginam in eodem Parlamento, quod nullus ad idem Parliament<sup>o</sup> summonitus, & ibidem interessens, ab eodem Parlamento absque speciali licentia dictorum Dominorum Regis & Reginae, & Cur<sup>a</sup> Parliament<sup>o</sup> predict<sup>o</sup> recederet, seu seipsum aliquo modo absentaret. Quidam tamen Thomas Denton de in com<sup>o</sup> Oxon. arm<sup>o</sup> Henricus Cary

Edw. Griffyn.

Inhibitu fuit.



Cary de in com' gent' Richardus Warde de  
 in com' arm' Edmund. Plowden de Tybmerthe in com. Berks  
 armiger, Henricus Chiverton de in com. armig. Robertus  
 Browne de in com. Johannes Courke de  
 in com. Johannes Pethebrige de in com.  
 Johannes Melhewes de in com. Courtney de  
 in com. Radulphus Michel de in com.  
 Thomas Mathew de in com. Richardus Brassey de  
 in com. Thomas Massye de in com.  
 armig. Petrus Frechwell de in com. miles. Hen-  
 ricus Vernon de Sydbery in com. Derby armig. Willielmus Moore  
 de villa Derb. in com. Derb. gen. Willielmus Banibrigge  
 de in com. Johannes Eveleigh de in com.  
 gen. Nicholas Adams de Dartmouth, alias Clifton Har-  
 nys in com. Devon gen. Richardus Phelipps de in com.  
 arm. Anthonius Dylvington de in com.  
 Andreas Hoore de in com. Christopherus Hoell de  
 in com. Dorf. gen. Johannes Mannocke de in com.  
 gen. Thomas Phelipps de in com. Johan-  
 nes Hamond de in com. Johannes Phelipps de  
 in com. Willielmus Randall junior, de  
 in com. Johannes Moyne de in com.  
 Hugo Smyth de in com. gen. Rogerus Gerrard de  
 in com. gen. Radulphus Scroope de  
 in com. gen. Thomas Moore de Hambled. in com. Buck. gen.  
 Willielmus Reade de in com. arm. Henricus  
 Mannock de in com. arm. Johannes Maynard de  
 Villa Sancti Albani, in com. Hertf. arm. Nicholas Debden de  
 in com. gen. & Philippus Tirwhyte de in com.  
 arm. qui summoniti fuerunt ad dictum Parlamentum, & in eodem  
 Parlamento comparuerunt, ac ibidem interfuerunt mandat. & inhibi-  
 tionem Dominorum Regis & Reginae supradicti parvi pendentes, ac  
 statum Reipublice hujus Regni Angliæ minime curantes aut ponde-  
 rantes postea scil. 12 die Januarii Annis Regnorum dictorum Domini-  
 rum Regis & Reginae nunc primo & secundo supradictis, & durante  
 Parlamento predicto ab eodem Parlamento sine licentia dictorum Domi-  
 norum Regis & Reginae & cur. sue predicti contemptuose recesserunt  
 in ipsorum Dominorum Regis & Reginae ac mandat. & inhibitionis suo-  
 rum predicti curiaeque predicti. contempt. manifestum, ac in magnum  
 Reipublice statum hujus Regni Angliæ detriment, nec non in pernicio-  
 sum exemplum omnium aliorum, &c. Unde idem Attornatus Domino-  
 rum Regis & Reginae petit advisamentum cur. in premis. & debet. le-  
 gis process. pers. eosdem Thomam Denton, Henricum Cary, Ri-  
 chardum Warde, Edmond Plowden, Henricum Chiverton, Rober-  
 tum Browne, Johannem Courk, Johannem Pethybridge, Johannem  
 Melhewes, Johannem Courtney, Radulph. Michell, Thomam Ma-  
 thewe, Richardum Brassey, Thomam Massye, Petrum Frechwell,  
 Henricum Vernon, Will. Moore, Will. Banibrigge, Johannem Eve-  
 leigh,

Mandatum & In-  
hibitionem.

leigh, Nichol. Adamps, Richardum Phelipps, Anthonium Dilvington, Andream Hoorde, Christopherum Hoell, Johannem Mannock, Thomam Phelipps, Johannem Hamon, Johannem Philipps, Willielmum Randall, Johannem Moyne, Hugonem Smith, Rogerum Gerard, Radulphum Scroope, Thom. Moore, Williclm. Read, Henricum Mannock, Johannem Maynard, Nicholaum Debden, & Philip' Tyrwhytt fieri ad respondend. Domino Regi, & Domina Regina de contempt. prædict. &c.

Et modo scil. die Veneris proxim. post Crastin. animarum isto eodem termino coram Domin. Rege & Domina Regina apud Westmonast. ven. prædict. Edm. Plowden per Andream Tusler Attornatum suum: & habit. audit. Informationis prædictæ die, quod ipse non intendit, quod Dominus Rex & Domina Regina nunc ipsum Edmund' pro præmissis vel aliquo præmissorum impetere seu occasionare velint aut debent: Quia dicit quod ipse ad dict. Parliament. informatione prædict. specificat. interfuit & præsens fuit, ac in eodem Parlamento continue remansit, viz. a principio ipsius Parliamenti usque ad finem ejusdem. Absque hoc quod ipse idem Edmund Plowden dicto 12 die Januarii, Anno primo & secundo supradict. durant. Parliament. prædict. ab eodem Parliament. sine licentia dictorum Dominorum Regis & Regina, & cur. sue prædict. contemptuose recessit in ipsorum Dominorum Regis & Regina ac mandat. & inhibitionis suorum prædict. curiaque prædict. contempt. manifest. ac in magnum Reipublicæ stat. hujus Regni Angliæ detriment. nec non in perniciosum exemplum omnium aliorum modo & forma prout per informac. prædict. vers. eum supponitur. Et hoc paratus est verificare prout cur. &c. unde pet. judicium: & quod ipse de præmiss. per cur. hic dimitatur, &c.

Mic. 3 & 4 Phil. & Mar. Rot. 36. inter plac. Regis & Regina.

Nota, The pregnancy of this travers. Sine die per de mise le Roync.

Midd. **V**E. fac. Thomam Constable de Grimbsbye in com. Lincoln. Arm. Henr. Leigh, de in com. Francis. Farnham de Querne in com. Leicest. arm. Li. lo. Michael. 2 & 3 Phil. Regis & Mar. Regina. Johannes Holcroft. Sen. de in com. milit. Williel. Brombley de in com. arm. Thom. Somerset de in com. arm. Georg. Ferrers de Markyat. in com. Hertf. gen. Nichol. Powtrell de Exincton in com. Notting. arm. F. Hillar. 3 & 4 Phil. & Mar. Tho. Moyle de in com. Kanc. milit. Thom. Waters de in com. arm. Williel. Tylcok de civit. Oxon. gen. Li. lo. Hillar. 2 & 3 Phil. & Mar. Thom. Balkden de Wechyngleigh in com. Surr. milit. Li. lo. Mich. 2 & 3 Phil. & Mar. Matth. Cradock de villa Staff. gen. Li. lo. Hillar. 2 & 3 Phil. & Mar. Georgium Lye de villa Salop. gen. Cess. process. per mandat. Attornat. Dominorum Regis & Regina, quia ulterius prosequi non vult vers. ipsum Georg. Lye. Johann. Hoord de Bridgenorth in com. Salop. gen. F. Mich. 5 & 6 Phil. & Mar. Johann. Alfop de villa de Ludlowe in com. Salop. gen. Williel. Laurence de Civ. Winton. gen. Li. lo. Mich. 2 & 3 Phil. & Mar. Robert. Hudson de Civ. Winton. gen. Li. lo. ut antea. Edmon. Rowse de Donwiche in com. Suff. mil. Robert. Coppinge de Donwiche.

Per de annis 1 & 2 Ph. & Mar. Rot. 48.



Cess. process. vers.  
Georgium Lye.  
Sine die per de-  
mise le Royne.

Per cont. Rott. de  
Annis 1 & 2 Ph. &  
Mar. Rot. 48.

Non prof. vers.  
Harford tantum.

Sine die per de-  
mise le Royne.

*in com. Suff. arm. Johannem Harman de Hospicio Domin. Regis & Domin. Regina gen. Willielm. Crowch de Wellowe in com. Somersf. arm. Thom. Lewes de villa de Wels in com. Somersf. gen. Li. lo. Hillar. 2 & 3 Phil. & Mar. Willielm. Godwyn de Wels prædict. in com. Somersf. gen. F. Mich. 3 & 4 Phil. & Mar. Johannem Ashburnham de Ashburnham in com. Suff. arm. Li. lo. Michael. 2 & 3 Phil. & Mar. Walt. Reyncum de Civ. Cicest. in Com. Suff. gen. Li. lo. Trin. 2 & 3 Phil. & Mar. Will. Moodyere de Slindon in com. Suff. gen. F. Trin. 4 & Phil. & Mar. Joh. Roberts de in com. Suff. gen. utlegat. &c. Will. Pellet de Steininge in com. Suff. gen. F. Pasch. 2 & 3 Phil. & Mar. Rich. Bowyer de Arundell in com. Suff. gen. Li. lo. Mich. 3 & 4 Phil. & Mar. Williel. Dandby de in com. Westmerl. gen. Robert. Griffyth de Civ. Novæ Sarum in com. Wilts, Draper. Li. lo. ut supra. Johan. Hooper de Civ. Novæ Sarum in com. Wilts, gen. Li. lo. Mich. 2 & 3 Phil. & Mar. Will. Clark de in com. Grif. Curtys de Bradstock in com. Wilts gen. Li. lo. ut supra, &c. Thom. Hil. de Denyses in com. Wilts gen. F. Hillar. 2 & 3 Phil. & Mar. Edw. Umpton de London gen. Li. lo. Michael. 2 & 3 Phil. & Mar. Thom. Parker de in com. Johan. Reade de London gen. F. Hillar. 2 & 3 Phil. & Mar. Arth. Allen de Civ. Bristol, Merch. Egid. Payne de Civ. Bristol, Gen. Williel. Hampshire de London, Gen. Li. lo. Michael. 3 & 4 Phil. & Mar. & Pet. Tayler de Malbrow in com. Wilts, Taylor. Li. lo. Michael. 3 & 4 Phil. & Mar. Resp. Regi de quibusdam transgress. & contempt. unde impetit sunt.*

Midd. **V**E. fac. cr. Trin. Edw. Braxden de civ. Wigorn. gen. Georg. Newport de Droitwich in com. Wigorn. gen. Wil. Wigstone de Wolstone in com. War. mil. Li. lo. Mic. 2 & 3 Ph. & Mar. Radulph. Browne de Woodlowes in com. War. gen. Li. lo. Mic. 3 & 4 Ph. & Mar. Joh. Harforde de civ. Covent. gen. Cess. process. &c. Nic. Frythe de in com. Ric. Rayleton de in com. Marc. Wyrley de civ. Lichfield, gen. Walt. Jobson de villa de Kingston super Hall. Jac. Brenne de in com. gen. Joh. Payton de in com. Kanc. ar. Joh. Cheney de in com. Kanc. ar. Will. Oxenden de in com. Kanc. ar. Th. Keys de in com. Kanc. gen. Wil. Hannington de in com. Kanc. Joh. Tyffars de in com. Nic. Crypse de in com. Kanc. ar. Ed. Herbert de Stawley in com. Salop. ar. F. Hil. 4 & 5 præd. Ph. & Mar. &c. Ric. Lloyde de in com. Kanc. gen. Joh. de Knylle de in com. ar. H. Jones de in com. mil. Meredith Gaines de in com. gen. & Ric. Bulkeley de in com. mil. Resp. Regi de quibusdam transgr. & contempt. unde impetit. sunt. Et postea, scil. Termino sanct. Trin. Annis 4 & 5 P. & Ma. pro eo quod sufficienter hic in cur. testatum est quod prædict. Joh. Harford habuit licentiam recedere a Parlamento, &c. Ideo Edw. Gritsyn ar. Atornat. Dominorum Regis & Regina generalis qui pro ipsis Rege & Regina in hac parte sequitur, dicit quod ipse ulterius in hac parte vers. præfatum Johan. Harford prosequi non vult. Ideo cess. hic process. vers. eum ont-rino, &c.

And to deal clearly, this is all that we can find concerning this matter. Thus you may observe, that the poor Commons, Members of the Parliament, in diebus illis, had no great joy to continue in Parliament, but departed. But now to proceed.

*Of Writs of Error in Parliament.*

If a Judgment be given in the Kings Bench, either upon a Writ of Error, or otherwise, the party grieved may upon a Petition of Right made to the King in English, or in French (which is not ex debito Justitiæ, but for decency, for that the former Judgment was given Coram Rege) and his answer thereunto, fiat Justitia, have a Writ of Error directed to the Chief Justice of the Kings Bench for removing of the Record in præsens Parliamentum, and thereupon the Roll it self, and a transcript in Parchment is to be brought by the Chief Justice of the Kings Bench into the Lords House in Parliament: and after the transcript is examined by the Court with the Record, the Chief Justice carrieth back the Record it self into the Kings Bench, and then the Plaintiff is to assign the Errors, and thereupon to have a Scire facias against the adverse party, returnable either in that Parliament, or the next: and the proceeding thereupon shall be super tenorem recordi, & non super recordum. All this, and many more excellent matters of Learning are contained in the Records following; whereof a light touch is hereafter given, the Records at large being too long here to be rehearsed. And the proceeding upon the Writ of Error is only before the Lords in the Upper House, Secundum legem & consuetudinem Parliamenti.

Queritur Guilielmus de Valencia contra Concilium regis, i. Justic' Coram Rege, pro injusto judicio tamen' allocationem Dionisie filie Guilielmi de monte Caniso ut hæred': sed Dominus Rex ratum habet eorum factum, & judicium redditum est contra Guilielmum de Valencia.

If a Nobleman had been erroneously attainted of Treason, &c. he might have had his Writ of Error in Parliament, notwithstanding the Statute of 33 H. 8. ca. 20. for that must be intended of lawful records of Attainder: but if the Attainder be established by Authority of Parliament, then he must exhibit his Petition in Parliament to be restored of grace. But now by the Statute of 29 El. ca. 2. it is ordained, that no Record of Attainder of High Treason that then was, for the which the party attainted had been executed for the same Treason should be reversed for error: but this extendeth only to Attainders of High Treason, and not to any Attainder of High Treason after that Act, nor to any High Treason before for the which the party was not executed.

The Prior and Covent of Montague by their Petition declared, that Richard Seymour had obtained an erroneous Judgment against the said Prior in the Kings Bench, upon a Judgment given in the Common Pleas upon a fine for the Mannor of Titenhull in the County of Somerset, &c. And the principal Error was for denying of aid of the King where it was grantable, and that hanging a Writ of Right, the said Richard sued a Scire facias. And commandment was given to the Chancelor of England, that he should make a Writ of possession and seison to be had, and other process upon that Judgment to be made: In this Record you shall observe excellent pleading.

Error in Parliament upon a Judgment in an Appeal of death upon an acquittal of the Defendant, and inquiry of the Abettors, &c.

And (that we may observe it once for all) when one sueth in Parliament to reverse a Judgment in the Kings Bench, he sheweth in his Bill which he exhibiteth to the Parliament some Error or Errors, whereupon he prayeth a Scire facias.

The Bishop of Norwich sheweth that an erroneous Judgment was given against him in the Common Pleas for the Archdeaconsry of Norwich belonging to his Presentation, and prayed that those Errors might be heard and redressed

The House of the Lords is a distinct Court for many purposes.

22 E. 3. fo. 3.  
Regist 17. Lib.  
Intr. Rast. 284.

Rot. Par. Post festum Sancti Hil. Anno 18 E. 1.  
Rot. 8.

Rot. Par. 4 E. 3; nu. 13. Rich. Earl of Arundels case. Ib. 28 E. 3. nu. 11, 21. Mortimer Earl of Marches case.

See Pasch. 28 E. 3. Coram Rege Rot. 37. Wigorn. the same case.

33 H. 8. ca. 20;  
29 Eliz. ca. 2.  
Rot. Par. 7 R. 2. nu. 20. 8 R. 2. nu. 14.

Rot. Par. 12 R. 2; nu. 15. Sir Thomas Methams case

Rot. Par. 30 E. 3. nu. 48.



there: whereunto answer was made, that Errors, by the Law, in the Common Pleas are to be corrected in the Kings Bench, and of the Kings Bench in the Parliament, and not otherwise.

1 R.2. nu. 28, 29. 2 R. 2. nu. 31. A Writ of Error in Parliament between William Mountacute Earl of Sarum, and Roger of Mortimer Earl of March of a Judgment in the Kings Bench.

*a* Ro. Parl. 15 R.2. nu. 23. & 18 R.2. nu. 11, 12, 13, 14, 15. This Parliament of 18 R.2 is not mentioned in the printed book, because no Act passed at this Parliament. See 2 H.4. nu. 40.

*b* Ro. Parl. 15 R.2. nu. 22.

*c* 21 R.2. nu. 25. 2 H.4. nu. 13.

*d* Rot. Parl. 1 H.4. nu. 91.

*a* The Dean and Chapter of Lichfield recovered in the Common Pleas against the Prior of Newport Pannel: the Prior by Writ of Error reversed the Judgment in the Kings Bench: the Dean and Chapter by Writ of Error in Parliament reversed the Judgment in the Kings Bench, and affirmed the Judgment in the Common Pleas, and a commandment given to the Chancellor, that the Judgment in the Common Pleas be executed by process by him to be made.

*b* John Sheppy complains of a Judgment in the Kings Bench in a Writ of Error.

*c* Error in Parliament between William Mountacute Earl of Salisbury, and Roger de Mortimer Earl of March, for the Castle, Town, and Honour of Denbeigh, &c. upon a Judgment given in the Kings Bench, and had a Scire facias returnable the next Parliament.

*d* William Seward alias Cheddre complaineth, that where he by that name was presented and inducted to the Parsonage of Wotton Under Egge in the County of Glouc', and thereof continued the possession by the space of four years, until the King by untrue suggestion presented Sir John Dawtry to the Parsonage of Underhegge in that County, where there was no such Parsonage called Underhegge, as the said William pleaded in a Quare Impedit brought by the King in the Kings Bench; upon which Writ the King recovered by the default the Parsonage of Underhegge, and not Under Egge, whereby upon a Writ sent to the Bishop of Worcester, the said William was put from his Parsonage of Under Egge: for which mistaking and Error, the Judgment for the said John in full Parliament was reversed, and a Writ awarded to the said Bishop for the restitution of the said William.

Rot. Parl. 15 R.2. nu. 24. & 2 H.4. nu. 48.

The Record and Judgment given in the Kings Bench for the King, against Edmond Bassett for certain Lands, &c. was for divers Errors reversed in Parliament, and restitution of the premises with the mean profits restored to the said Edmond.

5 H.4. nu. 40.

In Error in Parliament between Roger Deyncourt, and Ralph de Adderlye for a Judgment given in the Kings Bench for the Mannor of Anslye in Com' War. Sir William Gascoign Chief Justice delivered a Copy of the Record and Process, word for word, under his hand, &c. to the Clerk of the Parliament, &c.

Rot. Parl. 3 H.5. nu. 19.

In Error in Parliament between Richard Quatermayns and William Hore, &c. upon an erroneous Judgment given in the Kings Bench in an Action of Trespass, and the Plaintiff entered his Atturney of Record to proceed therein.

Rot. Parl. 10 H.6. nu. 51. & 11 H.6. nu. 40.

John Beauchamp Lord Abergaveny complained in Parliament upon an erroneous Judgment given upon a verdict in the Kings Bench in a Scire facias upon a Recognisance in the Chancery for the keeping of the Peace. In the Record whereof are excellent points of learning, as well touching the Recognisance, as the Process and Issue.

Rot. Parl. 31 H.6.

Error in Parliament, Pasch. 31 H.6. upon a Judgment given in an Assise in the Kings Bench, & intratur super marginem, Rot. mittitur in Parliamentum per Johannem Fortescue Termino Paschæ anno 31 H. 6.

Rot. Parl. 23 El. Dier 23 El. f. 373.

And to omit many others, to descend to some of later times, Richard Whalley recovered in Assise by verdict against divers tenants, who brought a Writ of Error in the Kings Bench, where the Judgment in the Assise was affirmed, the Tenant complained in Parliament for Error in the Kings Bench.

Rot. Parl. 12 Jac.

Error in Parliament upon complaint of Sir Christopher Heydon Knight of a Judgment in a Writ of Error in the Kings Bench between the said Sir Christopher Plaintiff, and Roger Godsalve and others Defendants, upon a Judgment



ment given for the said Roger, &c. against the said Sir Christopher in an Assise before Justices of Assise, wherein the Judgment in the Assise was affirmed in the Kings Bench, whereof the complaint was made, sed non prevaluit.

A Peer of the Realm being indicted of Treason or Felony, or misprision of Treason, may be arraigned thereof in Parliament, a Lord Steward being appointed, and then the Lords Spiritual shall make a Procurator for them; and the Lords, as Peers of the Realm, during the Parliament are Judges, whether the offence be Treason, &c. that is supposed to be committed by any Peer of the Realm, and not the Justices, as it appeareth in the Carl of Northumberland's case, Rot. Parl. 5 H. 4. nu. 11, 12. See in the Parliament holden 21 R. 2. sub titulo Pl. Coronæ, in a Roll annexed, &c. before the Steward of England and other Lords Temporal, Richard Carl of Arundels case. Rot. Parl. 31 H. 6. nu. 49. Thomas Carl of Devon was arraigned of High Treason before Humphrey Duke of Buck' Steward of England hac vice, and was acquitted by his Peers, 10 E. 4. fo. 6. b. Stanf. Pl. Coron. 153. b.

In case of Treason, &c. the Lords Spiritual make their Proctors. The Peers are Judges of Treason, &c. during the Parliament, &c. Rot. Parl. 5 H. 4. nu. 11, 12. Rot. Parl. 21 R. 2. sub tit. Plac. Coronæ, &c. Rot. Parl. 31 H. 6. nu. 49.

### Of Judicature.

Now order doth require to treat of other matters of Judicature in the Lords House, and of matters of Judicature in the House of Commons. And it is to be known, that the Lords in their House have power of Judicature, and the Commons in their House have power of Judicature, and \* both Houses together have power of Judicature: but the handling hereof according to the worth and weight of the matter would require a whole Treatise of it self; and to say the truth, it is best understood by reading the Judgments and Records of Parliament at large, and the Journals of the House of the Lords, and the book of the Clerk of the House of Commons, which is a Record, as it is affirmed by Act of Parliament in anno 6 H. 8. ca. 16.

\* Vide Placita in Parliam. Anno 33 E. 1. Rot. 33. Nicholaus Segreve adjudge per Prælatos, Comites, Earones & alios de concilio.

At the Parliament at York anno 12 E. 2. *Consideratum est per Prælatos, Comites, Barones, & Communitatem Angliæ.* The Lord Awdelyes case. At the Parl. at Westm' 15 E. 2. Hugh le pier adjudge per les Seignours & Commons. Rot. Parl. 42 E. 3. nu. 20. Sir John at Lee adjudged by the Lords and Commons. Rot. Parl. 50 E. 3. nu. 34. Lo. Nevils case. don to the Lord Latimer of a Judgment in Parliament. Rot. Parl. 50 E. 3. nu. 34. Lo. Nevils case.

See Rot. Claus. 1 R. 2. m. 5. 8. 38, 39. A trefage Counsel le Roy, les Seigniors & Commons, &c. Rot. Parl. 1 H. 4. nu. 79. it is no Act of Parliament, but an Ordinance, and therefore bindeth not in succession. Rot. Parl. 2 H. 5. nu. 13. Erroz assigned that the Lords gave Judgment without petition or assent of the Commons. Rot. Parl. 28 H. 6. nu. 19. and many others in the reign of King H. 6. King E. 4.

And of later times, see divers notable Judgments, at the prosecution of the Commons, by the Lords at the Parliaments holden 18 and 21 Jac. Regis, against Sir Giles Mompesson, Sir John Michel, Viscount S. Albone Lord Chancellor of England, the Carl of M. Lord Treasurer of England, whereby the due proceeding of Judicature in such cases doth appear.

Thomas Long gave the Mayor of Westbury four pound to be elected Burgesse, who thereupon was elected. This matter was examined and adjudged in the House of Commons, Secundum legem & consuetudinem Parliamenti, and the Mayor fined and imprisoned, and Long removed: for this corrupt dealing was to poison the very fountain it self.

Arthur Hall a Member of the House of Commons for publishing and discovering the conferences of the House, and writing a Book to the dishonour of the House, was upon due examination, Secundum legem & consuetudinem Parliamenti, adjudged by the House of Commons to be committed to the Tower for six months, fined at five hundred marks, and expelled the House.

Munckton Broke William Johnson a Burgesse of B. returned into the Chancery of Record, for which upon due examination in the House of Commons, it was resolved that secundum legem & consuetudinem Parliamenti, every man must take notice of all the Members of the House returned of Record at his

In the book of the House of Commons at the Parliament holden 8 Eliz. Ownsloe Speaker. fo. 19. 23 Eliz. f. 14 Popham Attorney general Speaker.

1b. 2 Aprilis. 1 Mariæ. Vid. 11 H. 6. c. 27. 5 H. 4. ca. 6.



See Rot. Parl.  
8 H.6.nu.57.

peril; but otherwise it is of the servant of any of the Members of the House; for there he that striketh, &c. must have notice. And the House adjudged Muncion to the Tower, &c.

If any Lord of Parliament, Spiritual or Temporal, have committed any oppression, bribery, extortion, or the like, the House of Commons being the general Inquisitors of the Realm, (coming out of all the parts thereof) may examine the same, and if they find by the Vote of the House, the charge to be true, then they transmit the same to the Lords with the witnesses and proofs.

### Priviledge of Parliament.

Vide inter leges  
Edw. Confess. c. 3.

And now after Judicature, let us speak somewhat of priviledge of Parliament: Experience hath made the priviledges of Parliaments well known to Parliament men, yet will we speak somewhat thereof.

Petitions coram  
Domino Rege ad  
Parliament' post  
festum Sancti  
Mich. Anno 18  
E.1.fo.7.

Magister militie Templi petit quod distringat (catalla unius de concilio) tempore Parlamenti pro reditu unius domus in London: Rex respondet, non videtur honestum, quod illi de concilio suo distringantur tempore Parlamenti, sed alio tempore, &c. Whereby it appeareth that a Member of the Parliament shall have priviledge of Parliament, not only for his servants, as is aforesaid, but for his horses, &c. or other goods distrainable.

Plac' coram Rege  
& ejus concilio  
ad Parliam. suum  
post festum San-  
cti Hil. Anno  
18 E.1. fol. 1.  
Vide Inf. 10 E. 3.  
more hereof con-  
cerning serving of  
a Citation.

Querela Comitis Cornubiæ, versus Bogonem de Clare & Priorem Sanctæ Trinitatis London, quod ipsi tempore Parlamenti ipsum comitem in medio aulae Westm ad procuracionem ipsius Bogonis citaverunt, quod compareret coram Archiepiscopo Cantuar, &c. Ipse Prior venit & Bogo similiter, & ponunt se in gratiam, misericordiam, & voluntatem Regis de alto & basso, ob quod mandatur turri London: Postea venit dictus Bogo & finem fecit domino regi pro prædicta transgressionem per duas mille marcas, &c. & quoad prædict' Comitem respondeat Comiti 1000 li. pro transgressionem sibi fact', &c. & prædictus Prior mittitur ibidem ad faciend' secundum quod Thesaurarius ei dicet ex parte dñi Regis.

And yet the serving of the said citation did not arrest, or restrain his body, and the same priviledge holdeth in case of Subpoena, or other process out of any Court of Equity.

Rot. Parliam.  
Anno 8 E.2. In  
Dorset. 8 E. 2.

Rex mandavit Justiciariis suis ad Assisas, Jurat', &c. capiend' assignat' quod supersedeant captioni eorundem ubi Comites, Barones & alii summoniti ad Parliamentum Regis sunt partes, quamdiu dictum Parliam. duraverit.

Ibid. m. 33 & 22.

De non procedendo ad capiend' Assisas versus illos, qui ad Parliamentum Regis apud Eborum venerunt.

In Scacc' ex Ori-  
ginali de Anno  
10 E.3. Ro. 27. No.  
\* That is, in  
Court of Parlia-  
ment.

Rex omnibus ballivis & fidelibus suis ad quos, &c. Salutem. Sciatis quod cum curiæ nostræ in quibus \* negotia regni nostri dedicantur ubiq; adeo liberæ sint & exemptæ, & à tempore quo non extat memoria liberæ & exemptæ fuerunt, quod nec aliqua forum Ecclesiasticum concernentia in eisdem curiis nostris fieri seu exequi, nec aliqui easdem curias nostras ad aliqua forum Ecclesiasticum contingentia faciendum vel exequendum ingredi debeant, vel consueverunt aliquibus temporibus retroactis, ac Magister Henricus de Harewedon Clericus, Edmundus de Lukenore & Johannes de Wedlingburgh de eo quod ipsi nuper in Cancellaria nostra in præsentia venerabilis Patris I. Cantuariensis Archiepiscopi Cancellarii nostri quasdam citationes sive monitiones dilecto clerico nostro Johanni de Thoresby, nec non provocaciones, appellationes & instrumenta publica super citationibus seu monitionibus prædictis in nostri contemptum & Coronæ nostræ ac Regiæ dignitatis nostræ præjudicium, & contra libertatem & exemptionem prædict' fecerunt per inquisitionem in quam se inde in curia nostra coram dilecto Cancellario nostro & aliis de concilio nostro posuerunt convicti fuissent & ea occasione prisonæ nostræ mancipati in eadem ad voluntatem nostram moraturi. Nos de gratia nostra speciali ad requisitionem Philippæ Reginæ Angliæ confortis nostræ charissimæ perdonavimus eisdem Henrico, Edmundo & Johanni imprisonment prædictum; Ita tamen quod nobis satisfaciant de redemptione sua occasione præmissorum, & quod super citationibus, monitionibus, provocacionibus

Citationes.  
This John de  
Thoresby was  
then Clerk of the  
Parliament.

bus, appellationibus seu instrumentis prædictis in dicta cancellaria nostra sic factis processum aliquem non faciant, nec quicquam quod in nostri vel juris coronæ nostræ præjudicium cedere possit attemptent vel attemptare faciant de cætero quovis modo. In cujus, &c. Teste Rege apud Turrim London 15 die Aprilis, ex originali de Anno 10 E.3. Rot. 27. Not.

\* Privilege of Parliament in informations for the King, generally the privilege of Parliament do hold, unless it be in three cases, viz. Treason, Felony, and the Peace.

\* Rot. Parl. An. 17 E.4. n.36. Vid. 21 E.4. fol. 48, 39. Rot. Parl. Anno 8 H.6. nu. 57. Vide infra, p.

### Of Statutes or Acts of Parliament.

There is no Act of Parliament but must have the consent of the Lords, the Commons and the Royal assent of the King, and as it appeareth by *a* Records and our *b* Books whatsoever passeth in Parliament by this threefold consent, hath the force of an Act of Parliament.

The difference between an Act of Parliament, and an Ordinance in Parliament, is, for that the *c* Ordinance wanteth the threefold consent, and is ordained by one or two of them.

92. *c* Rot. Parl. 25 E.3. nu. 16. &c. 39 E.3. 12. 22 E.3. 3. 8 H.6. cap. 29. Dier 4 Mar. 144. 39 E.3. 7. Thorp male erravit. Rot. Parl. 37 E.3. nu. 39. 1 R.2. nu. 56. diversity between Acts of Parliament and Ordinances. 2 R.2. Stat. nu. 28.

*d* I have read of a restitution in blood, and of lands of one Will. de Lafenby by the King, by the assent of the Lords Spiritual, and Commons, (omitting the Lords Temporal) this we hold is an Ordinance, and no Act of Parliament. And when the Clergy is omitted and the Act made by the King, the Lords Temporal, and Commons. See the Rolls of Parliament and authorities following, viz. Rot. Parl. Pasch. *e* 15 E.2. the case of the Spencers. 3 R.2. cap. 3. in print. Our Sovereign Lord by the common consent of all the Lords Temporal, and at the petition of the Commons, &c. 7 R.2. cap. 12. accord. 11 R.2. n.9, 10, 11. See 1 H.5. c.7. f. 21 R.2. n. 9 & 10. 6 H.6. n. 27. 7 H.8. Kelw. 184. the opinion of the Justices agreeable with the said Acts of Parliament. And note the mutability in this particular case of the Spencers, of this High Court of Parliament. The judgment by Parliament in 15 E.2. against the Spencers was in the same year by Act of Parliament repealed: that repeal was repealed by authority of Parliament in 1 E.3. that repeal of 1 E.3. was repealed by Act of Parliament in 21 R.2. and that of 21 R.2. was repealed by authority of Parliament in 1 H.4. And so the judgment against the Spencers standeth in force.

*a* Vid. 14 R.2 n. 15 & 12 H.4. n. 25. *b* 4 H.7. 14. b. per tours les Justices. 7 H.7. 14 & 16. 11 H.7. 27. a. Book prerogative 134. Fortescue fol. 20. *c* 18. Dier 1 Mar.

*d* 13 H.4. nu. 20. *e* Repeal 1 E.3. c. 2 Stat. 1. 15 E.3. tit. Petition. f. 2. See Rot. Pat. An. 1 H.4. part. 5. m. 36. the Isle of Man given to the King by the Lords Temporal and Commons. f. Repeal. 1 H.4. c. 3

### The division of Acts of Parliament.

Of Acts of Parliament some be introductory of a new Law, and some be declaratory of the ancient Law, and some be of both kinds by addition of greater penalties or the like. Again, of Acts of Parliament, some be general, and some be private and particular. All Acts of Parliament relate to the first day of Parliament, if it be not otherwise provided by the Act.

33 H.6. fol. 17.

### The several forms of Acts of Parliament.

In ancient time all Acts of Parliament were in form of Petitions. And for the several forms of Acts of Parliament, see the Princes case in the 8 Book of Reports. Now for the reading, committing, amending, ingrossing, voting, and passing of Bills in either House, and touching conferences with the Lords, and for the privilege of any Member of either Houses, and of their servants more then hath been said, they be so ordinary and well known, and in such continual practice, as it were but expence of time to treat any more of them. And for that many times the Rolls of the Parliament have not been truly ingrossed, at the

Dier. 3 Mar. 131. lib. 8. fo. 1. the Princes case. Concerning the ingrossing in Rolls of Acts of Parliament. Rot. Parl. 7 H.4. nu. 65.



the request of the Commons certain of them are to be appointed, who should be at the ingrossing of the Rolls of Parliament.

*In former times Acts of Parliament were proclaimed by the Sheriffs.*

When I read the case of Premunire in 39 E. 3. upon the Statute of 27 E. 3. of Provisors against the Bishop of Chichester, and observing that Serjeant Cavendish of counsel with the Bishop objected two things: First, That the Act whereupon the Writ was grounded, was no Statute. Secondly, That if it were a Statute, it was never published in the County: whom Sir Robert Thorpe Chief Justice answered. Although proclamation be not made in the County, every one is bound to take notice of that which is done in Parliament; for as soon as the Parliament hath concluded any thing, the Law intends, that every person hath notice thereof, for the Parliament represents the Body of the whole Realm: and therefore it is not requisite that any Proclamation be made, seeing the Statute took effect before. This gave me to understand, that albeit it was not required by Law that Statutes should be published in the County; yet seeing in those days and long after, the use of Printing came not into this Realm; the use was (as it appeareth by Cavendishes speech) that they should be published in the County, to the end that the Subjects might have express notice thereof, and not to be overtaken by an intendment in Law, which gave me occasion to search and inquire how this usage was, and how long it continued. And in the end I found, that at every Parliament the Acts that passed were transcribed into Parchment, and by the Kings Writ directed to the Sheriff of every County of England, and commandment given to him, that all the said Statutes in all places through his whole Wailiwick, as well within Franchise as without, where he should find most fit, that he not only should proclaim them, but to see that they should be firmly observed and kept. And the usage was to proclaim them at his County Court, &c. and there to keep the transcript of the Acts, that who so would, might read or take copies thereof. And this Writ was sometime in Latin and sometime in French, as in those days the Statutes were enacted in Latin or in French. But an example of the one, and of the other will more illustrate this matter.

John Moore.  
Printing was invented in Meath in Germany, Anno Domini 1441. and came to us in the Reign of H. 6. See Bodin de Methodo historiarum, l. 7. una Typographia cum omnibus omnium veterum inventis certare facile potest. Polydorus Virgil. de invent. rerum lib. 2. cap. 7. Cardan. de varietate rerum l. 3. c. 64.

At the Parliament in An. 10 E. 3.

\* Nota, That the Sheriff that hath custodiam Comitatus, should see the Statutes within his County to be kept. At the Parliament An. 1 R. 2.

Edwardus Dei gratia Rex Angliæ & Franciæ, & Dominus Hiberniæ Vic. Norff. Salut. Quædam statuta p nos, Prælatos, Comites, Barones, & alios magnates ad Parlamentum nostrum tentum apud Eborum in Cra. Ascensionis ultimæ præterit ordinavimus & stabilivimus, prout sequitur, and recite the several Statutes verbatim. And then the Writ concludeth, Et ideo tibi præcipimus, quod statuta illa & omnes articulos in eisdem contentos in singulis locis in baliva tua, tam infra libertates, quam extra, ubi expedire videris, publice proclamari & \* firmiter teneri & observari facias. Teste, &c.

Richard p la grace de Dieu Roy Dengleterre & de France, & Seignieur d Ireland a nostre Viscount de Norff. Salut. Saches que al honneur de Dieu, & reverence de Saint Esglise & pur nurrer peace, unitie, & concord in tous parts deins nostre Realme, le quel nous desirons mult entirement, del assent des Prelats, Dukes, Counts & Barons de mesme nostre Realme, al instance & special request des Commons de nostre Realme assemblees a nostre Parliament tenus a Westm. a la quinzim de S. Michael lan de nostre Reigne premier avons fait ordeiner & stablier certaine statuts en amendement & relievment de mesme nostre Realme, & en la forme que sensuist. Primerment est assentus & etablie, que Saint Esglise eit & enjoyce tous les droitures, &c. rehearsing all the Statutes that passed at that Parliament. And the Writ concludeth thus, Et pur ceo vous mandons que tous les Statuts faces crier & publier, & firmament tener p my vostre Baillie solong; la forme & tenor de icel, & ceo ne lesses en ascun manner. Done p tesmoignants de nostre grand seale al Westm. le premier jour de Feverer lan de nostre Reigne primer. And the like Writs continued until the beginning of the Reign of H. 7. long time after printing within the Reign of H. 6. (as hath bin said) came unto us.

Proroga-



*Prorogation, Adjournment, Continuance, and what maketh a Session of Parliament.*

The passing of any Bill or Bills by giving the Royal assent thereunto, or the giving any judgment in Parliament doth not make a Session, but the Session doth continue until that Session be prorogued or dissolved: and this is evident by many precedents in Parliament ancient and late.

The Parliament of 14 E. 3. began at Westminster the Wednesday after Mid Lent: the first Monday of the Parliament, the ninth part of their Grain, Wheat and Lamb, &c. was granted to the King, on condition that the King would grant their petitions in a Schedule beginning. These be the petitions which by the Commons and Lords was drawn into a form of a Statute, and passed both Houses, and the Royal assent thereunto, and the same exemplified under the Great Seal. After this the Parliament continued, and divers Acts made, and petitions granted, and in the end that Parliament was dissolved.

In the Parliament holden An. 3 R. 2. it is declared by Act of Parliament that the killing of John Imperiall Ambassadors of Jenoa, was High Treason crimen læsæ majestatis, and yet the Parliament continued long after, and divers Acts of Parliament afterwards made, and petitions granted: and in the end the Parliament dissolved.

In the Parliament begun the first day of March, An. 7 H. 4. on Saturday the 8 day of May it was enacted by the King, the Lords Spiritual and Temporal, and the Commons, that certain strangers by name, who seemed to be Officers to the Queen, should by a day depart the Realm, and proclamation thereof in kind made by Writ, by authority of Parliament, which Parliament continued, and divers other Acts of Parliament made, and petitions answered: and on the 22 day of December 8 H. 4. dissolved.

The Parliament begun 7 November, and on the first day of the Parliament it was resolved by all the Judges, that those that were attainted of treason, and returned Knights, Citizens, or Burgesses of Parliament, that the attainders were to be reversed by authority of Parliament before they could sit in the House of Commons: and that after the attainders reversed, both the Lords, and those of the House of Commons might take their places, for such as were attainted could not be lawful Judges, so long as their attainders stood in force: and thereupon the attainders were reversed by Act of Parliament, and then they took their places in Parliament, and the Parliament continued and divers Acts made.

\* The Bill of Queen Katherine Howards attainer passed both Houses about the beginning of the Parliament, whereunto the King, sitting the Parliament, by his Letters Patents gave his Royal assent, and yet the Parliament continued until the first day of April, and divers Acts of Parliament passed after the said Royal assent given. Divers more might be produced, but these shall suffice. So as albeit Bills pass both Houses, and the Royal assent given thereunto, there is no Session until a prorogation or a dissolution.

The diversity between a prorogation and an adjournment, or continuance of the Parliament, is, that by the prorogation in open Court there is a Session, and then such Bills as passed in either House, or by both Houses, and had no Royal assent to them, must at the next assembly begin again, &c. for every several Session of Parliament is in Law a several Parliament: but if it be but adjourned or continued, then is there no Session: and consequently, all things continue still in the same state they were in before the adjournment or continuance.

And the title of divers Acts of Parliament be, At the Session holden by prorogation, or by adjournment and prorogation, but never by continuance or adjournment tantum. And the usual form of pleading is, ad Sessionem tantam, &c. per prorogationem.

and yet in them divers adjournments were. See the Journal Book in the Lords House. *ultimo Janii 14 E. 3. Magni Sigilli ex mandato Domine Regine adjournavit presens Parliament' usq; in festum omnium Sanctorum.* And in the Parliament in An. 39 El. *Custos magni Sigilli ex mandato Domine Regine* (the Queen being absent.)

Rot. Parl. 14 E. 3.  
Stat. primo. n. 7, 8,  
9, &c.

Rot. Parl. 3 R. 2.  
nu. 18. &c.

Rot. Parl. 7 H. 4.  
nu. 29. &c.

Rot. Parl. 1 H. 7.  
nu.  
1 H. 7. fol. 4. b.

\* Rot. Par. 33 H. 9.  
begun the 10 day  
of Jan. and con-  
tinued till the 1. of  
April following.  
On the 12 of Febr.  
the Queen was be-  
headed in the  
Tower, sitting the  
Parliament.

*Prorogatio, a porro &  
rogo, unde prorogatio.  
Adjournment, unde  
adjournare, & ad-  
journalmentum, est  
ad diem dicere, or  
diem dare.*

Rot. Parl. 23 H. 8.  
24 H. 8. n. 1. 25 H. 8.  
n. 1. 26 H. 8. n. 1.  
27 H. 8. n. 1. &c.  
2 & 3 E. 6. n. 1.  
3 & 4 E. 6. n. 1. &c.  
1 Mar. Sess. 2. 28 El.  
nu. 1. &c. And in  
every of them it  
is said [ and there  
continued until  
such a day ]



We have been the longer and more curious for the clearing of this point for two reasons, 1. For that the adjournment or continuance (as before it appeareth) is much more beneficial for the Commonwealth for expediting of causes, then a prorogation. 2. In respect of a clause in the Act of Subsidy in the Parliament holden in Anno 18 Jac. Regis, which is but declaratory of the former Law, as by that which hath been said appeareth.

When a Parliament is called and doth sit, and is dissolved without any Act of Parliament passed, or judgment given, it is no Session of Parliament, but a Convention.

Rot. Parl. 18 R. 2.  
which began 15  
Hilarii.

In the 18 year of R. 2. at a Parliament holden before the Duke of York (the King being in his passage to Ireland) the petitions of the Commons were answered; and a Judgment given in the Kings Bench for the Priory of Newport-pannel, against the Dean and Chapter of Lichfield was reversed, but no Act of Parliament passed, and therefore this Parliament is omitted in the print; but it is no question but it was a Session of Parliament, for otherwise the Judgment should not be of force: and many times Judgments given in Parliament have been executed, the Parliament continuing before any Bill passed.

### *The House of Commons is a distinct Court.*

Nota, the House of Commons is to many purposes a distinct Court, and therefore is not prorogued, or adjourned by the prorogation or adjournment of the Lords House: but the Speaker upon signification of the Kings pleasure by the assent of the House of Commons, doth say; This Court doth prorogue or adjourn it self; and then it is prorogued or adjourned, and not before. But when it is dissolved, the House of Commons are sent for up to the higher House, and there the Lord Keeper by the Kings commandment dissolveth the Parliament; and then it is dissolved, and not before. And the King at the time of the dissolution ought to be there in person, or by representation: for as it cannot begin without the presence of the King either in person or by representation, (as before it hath been said) so it cannot end or be dissolved without his presence either in person or by representation. Nihil enim tam conveniens est naturali æquitati, unumquodq; dissolvi eo ligamine quo ligatum est.

Bracton.

33 H. 2. cap. 21.  
Royal assent by  
Letters Patents.  
Dier. 1 Mar. 93.  
Commission au 4  
Seigniors, &c. a  
doner Royal assent,  
& indorcement fait  
Soit fait come est  
desire.

It is declared by Act of Parliament, that the Kings Letters Patents under his Great Seal, and signed with his hand, and declared and notified in his absence to the Lords Spiritual and Temporal and Commons assembled in the higher House of Parliament, is, and ever was of as good strength and force, as if the Kings person had been there personally present, and had assented openly and publickly to the same.

### *Of Subsidies and Aids granted by Parliament.*

Subsidy is derived of the Verb Subsidiari, which signifieth to be ready to help at need, unde subsidium, which signifieth aid and help at need, so properly called, when Souldiers were ready to help the foreward of the battel: and aptly was the word so derived, aswel because that which we call now subsidia, Subsidies, were anciently called auxilia, Aids, granted by Act of Parliament upon need and necessity: as also, for that originally and principally they were granted for the defence of the Realm, and the safe keeping of the Seas, &c. Communia pericula requirunt communia auxilia.

This word [Subsidy] is common as well to the English, as to the French. Concerning Subsidies hear what a stranger truly writeth. Reges Angliæ nihil tale, nisi convocatis primis ordinibus, & assentiente populo, suscipiunt. Quæ consuetudo valde mihi laudanda videtur; interveniente enim populi voluntate & assensu crescit robur, & potentia regum, & major est ipsorum autoritas, & feliciores progressus.

Jh. Cominæus,  
Lib 5. fo. 233.

Subsidies taken in their general sense for Parliamentary Aids are divided into perpetual and temporary: perpetual, into three parts, viz. into Customa antiqua

antiqua, five magna, custuma nova five parva, and into custom of Broad cloth. Temporary, whereof there are three kinds, viz. 1. Of Tunnage and Poundage of ancient time granted for a year or years incertainly, and of later times for life. 2. A Subsidy after the rate of 4 s. in the pound for Lands, and 2 s. 8 d. for Goods. And 3. for an Aide called a Fiftenth. And of these in order.

### Custuma antiqua five magna.

Custuma antiqua five magna was by Act of Parliament granted to King E. 1. his Heirs and Successors for Transportation of three things, viz. Wools, Woolsels and Leather, viz. for every sack of Wool containing thirty six stone, and every stone fourteen pound, half a mark; and for three hundred Woolsels half a mark, and for a last of Leather thirteen shillings four pence, to be paid as well by Strangers as by English, Prælati, Magnates, & tota communitas concesserunt quandam novam consuetudinem nobis de lanis, pellibus & coriis dimid' marc', de 300 pellibus dimid' marc', & de lasta coriorum unam marcam. In the Statute called confirmationes cartarum Anno 25 E. 1. there is a saving in these words, Save a nous, & nous heires la custome des leynes, pealx & quires grant' per le Comminalty du Realm. See also the like in the Preamble: \* Salva tamen nobis & hæredibus nostris custuma lanarum, pellium & coriorum per Communitatem dicti regni nobis prius concess.

<sup>a</sup> Note it is said in divers Records, per Communitatem Angliæ nobis concess. because all grants of Subsidies or Aids by Parliament do begin in the House of Commons, and first granted by them: also because in effect the whole profit which the King reapeth doth come from the Commons.

### Custuma parva & nova.

In the 31 year of E. 1. the Merchant Strangers in consideration of certain liberties and privileges granted to them, and a release to them of all prises and takings, gave to the King and his Heirs, three shillings four pence, ultra antiquam custumam ut prius concess. So as where the Subject paid a Noble, the Stranger paid ten shillings, &c. See the Statutes of 1 H. 7. cap. 2. 11 H. 7. ca. 14. 22 H. 8. cap. 8.

This was questioned Rot. ordinat. Anno 5 E. 2. but allowed of in Parliament, Anno 1 E. 3. 9 E. 3. Stat. Stapl. ca. 26. F. N. B. 227. d. 259. a.

### Custom of what things, ex antiquo.

And it is to be observed, that of ancient time no Custom was by English or Stranger, but for Wools, Woolsels, and Leather. Whereby it appeareth how necessary the knowledge of ancient Records, and of the true original of every thing is. 1 El. Dier 165.

In the Reign of E. 3. a great part of the Wools for the which such Custom was granted and paid, as is aforesaid, was draped into broad Cloth: whereupon question grew, whether upon Transportation of the Cloth, into which the Wool was draped, Custom should be proportionably paid, having regard to the quantity of the Wool so converted into Cloth: and it was resolved, that no Custom should in that case be paid, because the Wool by the labour and industry of man was changed into another kind of merchandize: wherewith the King held himself satisfied, and so it appeareth in the Kings own Writs and Records enrolled in the Exchequer. Of Wools draped into Cloth no Custom was due.

The first Act of Parliament that gave any Subsidy of Cloth, was in Anno 21 E. 3. (not printed) viz. fourteen pence of Lieges, and one and twenty pence

See hereafter, c. 11  
Verb. de nous Customes, &c.  
Rot. finium An.  
3 E. 1. Rot. Pa.  
3 E. 1. m. 1. dat.  
10 Novemb. which was in the end of the year, for he began his reign 17 Nov. Confirmat. Cartarū Vet. Mag. Cart. 2. part. f. 36. a.  
\* Int. brevia de Term. Mich.  
26 E. 1. In offi. remem. regis.  
4 12 H. 4. nu. 45.  
6 H. 6 nu. 11.  
12 E. 4 ca. 3. E. 4. n. 30. 1 E. 6. ca. 13.  
1 Mar cap. 18.  
1 Eliz. ca. 19.  
& 3 Jac. Regis accord.

Custuma is derived of the French word *Constum*, i. tributum seu vectigal.

Rot. Cart. 31 E. 1. nu. 44. called, Carta mercatoria;



Int. Orig. de  
Scaccario.

24 E.3. Rot. 13.  
Ib. 27 E.3. Rot. 4.  
See the second  
part of the Insti-  
tutes, Mag. Carr.  
cap. 30. pa. 60.  
By 27 E.3. Stat. 1.  
& ca 4. Custom of  
Cloth.

\* Viz. the Subsi-  
dies granted in  
Anno 21 E.3.  
The Alnagers fee  
on the Subject  
granted by Par-  
liament.  
Mag. Carr. ca 30.  
Consuetudines.  
Stat. de Scaccario.  
51 H.3. Custom  
des Leynes.  
11 H.4. ca. 7.

of Strangers for every Cloth of Allise, and two shillings four pence of Lieges, and three shillings six pence of Strangers for every Cloth of Scarlet, &c. Vide inter Original' de Scaccario, 24 E.3. Rot. 13. And the reason of granting the said Subsidies of broad Cloth was, Quia jam magna pars lanæ regni nostri in eodem regno pannificitur, de qua Custuma aliqua non est soluta, per quod proficuum quod de Custumis & Subsidiiis lanarum, si extra dictum regnum ducerentur, percipere debemus, in multo diminuuntur, &c. And yet if in any case the King might by his Prerogative have set any imposition, he might have set one in that case, for that as it appeareth by that Record, by making of Cloth the King lost his Customs of Wool: and therefore for further satisfaction of the King for the Custom of Wool at the Parliament holden in Anno 27 E.3. a Subsidy was granted to the King, his Heirs and Successors. (\* over the Customs thereof due) viz. of every whole Cloth of Allise not ingrained four pence, and for the half of such a Cloth, two pence, and of every Cloth ingrained five pence, and of the half two pence half penny, and of every Cloth of Scarlet six pence, and of the half three pence; and the Alnagers fee is granted to him by Act of Parliament, viz. for the measuring of every Cloth of Allise of the Seller a half penny, and of half a cloth a farthing for his office, and no more, nor shall they take any thing for a cloth that is less: and that he take nothing of the Alnage of any cloth but only of such cloth as is to be sold. And both in this Act, and in some Acts in the Reign of H.3. consuetudines & custumæ, which are englished, Customs, are taken for the Subsidies that were granted by Parliament, for verily those were ancient and right Customs or Subsidies. And in the Statute of 11 H.4. Customs and Subsidies are used as Synonyma's.

### Butlerage.

Butlerage is a Custom due to the King of two shillings of every Tun of Wine brought into this Realm by Strangers: but Englishmen pay it not.

Lib. rubeus in  
Scacc. fo. 265.  
Vid. 6 E.3. fo. 5.  
& 6. the Archb.  
Yorks case.

In libro Rubeo in Scaccario in custodia Rememoratoris Regis, fol. 265. the grant of King John to the Merchants of Aquitain trading for Wines thence into England of divers liberties, viz. De libertatibus concessis mercatoribus vinetariis de Ducatu Aquitanie, reddendo regi & hæredibus suis 2 s. de quolibet dolio vini ducti per eodem infra regnum Angliæ vel potestatem regis.

Rot. Cartarum  
Anno 31 E. 1.  
nu. 44. called Car-  
ta mercatoria.

All Merchants Strangers in consideration of the grant to them by the King of divers liberties and freedoms, concesserunt quod de quolibet dolio vini quod adducent vel adduci facerent infra regnum, &c. solvent nobis & hæredibus nostris nomine Custumæ duos solidos, &c.

### Prisage.

Fleta li. 2. ca. 21.  
Rot. Pat. 40 H.3.  
Rot. Par. 28 E.1.  
pro Math. de Co-  
lumbar'.

Prisage is a Custom due to the King of the Wines brought in by the Merchants of England of every Ship having twenty Tuns or more, two Tuns, viz. one before the Mast, and the other behind, paying twenty shillings for each Tun; and this is called certa prisæ, and recta prisæ, and regia prisæ, as in the Record ensuing appeareth, and hereof Merchant Strangers are discharged, per cartam mercatoriam, 31 E. 1. Ubi supra.

P. Rec. 20 R. 2.  
Vid. Tr. 33 E. 1.  
Rot. 124. Prisæ  
Vinorum in Hi-  
bernia.

Memorandum quod rex habet ex antiqua consuetudine de qualibet nave mercatoris vini 6. carcat' applican' infra aliquem portum Angliæ de viginti doliis duo dolia, & de decem doliis unum de prisæ regia pro quodam certo ab antiquo constitut' solvend'.

Hereby it appeareth that Prisage is due by prescription, and that it was a certainty of ancient time ordained to be paid.

43 E.3. ca. 2. &  
1 H.8. ca. 5.  
Concerning the  
Alnaging of new  
Draperies.

It is called Butlerage because the Kings chief Butler doth receive it, and Prisage, because it is a certain taking or purveyance for Wine to the Kings use.

In Hillary Term, Anno 2 Jac. Regis, upon a suit made to the King by the Duke of Lenox, question was moved concerning new Draperies, as Friza-  
does



does, Bayes, Northern Cottons, Northern Dozens, Cloth rath, Durances, Perpetuanos, Fustians, Canvas, Sackcloth, Worsteads, and Stuffs made of Worstead yarn, whether the King might grant the Alnaging of them with a reasonable fee, or whether they were within the said Statute of 27 E. 3. And these questions were by the Kings commandment in this Hillary Term referred to all the Judges of England to certify their Opinions concerning the suit to the Lords of his Privy Council; who upon often hearing of the cause, and mature deliberation and conference amongst themselves, in the end in Trinity Term following with one unanimous consent, certified in writing in these words following, viz. To the Lords and others of his Majesties most Honourable Privy Council. Our duties to your Lordships remembered. May it please the same to be advertised, that according to your Letters in that behalf, we have heard the matter touching the fearm of the Alnage and measurage that is sought to be granted by his Majesty of sundry kinds, as well of new made Drapery, as of other Stuffs made within this Realm. And upon hearing as well of some of the part of the Master of Orkney, as others, both of the behalf of the Duke of Lenox and Master Shaw, have informed our selves touching the same. And for our opinions we are resolved, that all new made Drapery made wholly of Wool, as Frizadoes, Bayes, Northern Dozens, Northern Cottons, Cloth rath, and other like Drapery, of what new name soever, for the use of mansbody, are to yield Subsidy and Alnage according to the Statute of 27 E. 3. and within the office of the ancient Alnage, as may appear by several decrees in that behalf made in the Exchequer in the time of the late Queen. But as touching Fustians, Canvas, Sackcloth and such like, made meerly of other stuff then Wool, or being but mixed with Wool, we are of Opinion, that no charge can be imposed for the search or measurage thereof, but that all such Patents so made are void, as may appear by a Record of the 11 year of H. 4. wherein the reason of the Judgment is particularly mentioned, which we held not amiss to set down to your Lordships, which is thus, The same King H. 4. granted the measurage of all Woollen Cloth and Canvas that should be brought to London to be sold by any stranger or denizen (except he were free of London) taking one half penny for every piece of Cloth so measured of the seller, and one other half penny of the buyer, and so after the rate for a greater or lesser quantity, and one penny for measuring of 100 Ells of Canvas of the seller, and so much more of the buyer. And although it were averred that two other had enjoyed the same office before with the like fees, viz. one *Shering* by the same Kings grant, and one *Clytheroe* before by the grant of King R. 2. yet, amongst other reasons of the Judgment, it was set down and adjudged, that the former possession was by extortion and coercion, and without right, and that those Patents were *in operationem, oppressionem & depauperationem populi Domini Regis, & non in emendationem ejusdem populi, &c.* and no benefit to the King, and therefore the Patents void. And as touching the narrow new stuff made in Norwich and other places with worstead yarn, we are of opinion that it is not grantable, nor fit to be granted. for we cannot find, that there was ever any Alnage upon Norwich worsteads. And for these stuffs, if after they be made and tacked up for sale by the makers thereof, they should be again opened to be viewed and measured, they will not well fall into their old plaits to be tacked up as before, which will be (as is affirmed) a great hinderance to the sales thereof in gross, for that they will not then appear to be so merchandizable, as they were upon the first making of them up. And even so we humbly take our leaves. Serjeants-Inn, the 24 of June, 1605. Which Certificate being read by the Lords of the Privy Council (I being then Atturney general and present) was well approved by them all, and commandment given, that it should be kept in the Council Chest to be a direction for them to give answer to all suits of that kind.

And it is to be observed, \* that Acts of Parliament that are made against the freedom of trade, merchandizing handycrafts, and mysteries, never live long.

See Rot. Parl.  
50 E. 3. nu. 142.  
Cogware Kerleys.  
See hereafter,  
cap. 67.  
See Rot. Parl.  
9 H. 4. nu. 34.  
Kendall Clothes,  
&c. 11 H. 4. c. 2.  
enact. 11 H. 4. nu.  
26. for remnants  
of Cloth, &c.  
11 H. 4. c. 7. Stat. 20.

37 E. 3. ca. 5. 6.  
38 E. 3. ca. 2.  
Lib. 11. fo. 54.  
de Taylers de  
Ipswich.



Bills, Motions.

*Good Bills or Motions in Parliament seldom die.*

It is an observation proved by a great number of presidents, that never any good Bill was preferred, or good motion made in Parliament, whereof any memorial was made in the Journal Book, or otherwise, though sometime it succeeded not at the first, yet hath it never died, but at one time or other hath taken effect, which may be a great encouragement to worthy and industrious attempts, as taking some few examples for many, which I have quoted in the margin.

8 E.2.nu. 17 E. 3. nu.49. 1 R.2. nu.82. 4 R.2. nu.36. 9 R.2. nu.44. 1 H.4. nu.121. 2 H.4. nu.83. 2 H.4. nu.70. 11 H.4. nu.47. 1 H.5.nu.23. 7 H.4.nu.18. 1 H.6.nu.41. 7 E.4.nu.20. *Acts of Parliament.* 2 E. 3. cap.2. 25 E.3.ca.5. 4 H.4. ca.22 1 H 5. cap.1.15. H.6. cap.14. 1 R.3.ca.3. 21 H.8. cap.5. 23 H.8 cap.4. 26 H.8. cap.3. 31 H.8.ca.1. 32 H.8. cap.32. 2 E.6. cap.8. & 13. 1 & 2 Ph. & Mar. cap.13. Vide infra, cap.8.pa.

*The Subsidy of Tunnage and Poundage.*

By the subsequent Records you shall observe 13 things. 1. The grant of Poundage only. 2. Of Tunnage and Poundage. 3. Several rates, sometimes 6 d. 8 d. 12 d. for Poundage. 4. Sometimes 2 s. 18 d. 3 s. 5. Hac vice, 1, 2, 3, 4 years for life. 6. To Merchants, &c. 7. To have intermission and to vary, lest the King should claim it as a duty. 8. Expressed upon free gift. 9. Upon condition to keep the Seas, and for commerce. 10. That is ever the consideration and cause of the grant. 11. Granted without retrospect. 12. Sometimes double of Strangers. 13. Cloth excepted, that it be not subject to Tunnage and Poundage. 31 H.6.

*The Records.*

a 47 E.3. nu.12.  
b 6 R.2.nu.13.  
c 7 R.2. stat.1.

d 5 R.2.nu.40.  
9 R.2.nu.11.  
10 R.2.nu.18.  
11 R.2.nu.12.  
e 13 R.2.nu.20.  
f 14 R.2.nu.12.  
g 17 R.2.nu.12.  
h 2 H.4.nu.9.  
i 4 H.4.nu.28.  
k 6 H.4. nu.9.  
8 H.4.nu.9.  
9 H.4.nu.27.  
l 11 H.4.nu.45.  
m 13 H.4.nu.10.  
n 1 H.5.nu.17.  
o 3 H.5.nu.50.

p 2 H.6.nu.14.  
q 3 H.6.nu.17.  
9 H.6. nu. 14.  
r 23 H.6.nu.16.  
s 31 H.6.nu.8.  
& cap.8.

\* Nota.

t 4 E.4. & 12 E.4. ca.3. in print.  
u Rot.Par. 1 H.7. not Printed, for he had many subsidies, but printed none.  
x Rot.Par. 1 H.8. not printed.  
Vid. 6 H.8. ca.14. in print.

a Of Poundage only, and 6 d. in the pound, for two years upon condition, &c.  
b 6 d. for Poundage, and 2 s. for Tunnage of Wine, hac vice.  
c 6 d. of every pound of merchandize, and 2 s. of every Tun of Wine, upon condition, &c. hac vice.  
d Sometimes to have intermission, and to vary, lest the King should claim as duties.  
e For Tunnage of Wine 3 s. and 6 d. for Poundage for one year.  
f 3 s. for Tunnage of Wine, 12 d. for Poundage, hac vice.  
g 6 d. for Poundage, and 18 d. for Tunnage of Wine for three years.  
h 8 d. for Poundage, and 2 s. for Tunnage of Wine.  
i 12 d. for Poundage, and 3 s. for Tunnage of Wine for three years.  
k 12 d. for Poundage, and 3 s. for Tunnage of Wine for several times upon condition, sometime for one year. In these and most of the former granted upon condition for due employment / of their own good will, and so entered, and the King to have a certain sum m more expressly.  
n 12 d. for Poundage, and 3 s. for Tunnage of Wine for four years.  
o The like Subsidy is granted to the King for his life upon conditions, &c. which was the first grant of Tunnage and Poundage for life, which was a leading grant, as hereafter appeareth.  
p The Subsidy of Poundage only for two years.  
q Tunnage of Wine and Poundage granted for several years.  
r Tunnage and Poundage, ut prius of Denizens, double of Strangers.  
s Tunnage of Wine and Poundage granted to H.6. for life, with an exception of all Woollen \* Cloth: and here Cloth was first excepted, and was a leading exception in all subsequent Acts.  
t Tunnage of Wine and Poundage granted to E.4. for life with no retrospect, but for the time to come.  
u At the Parliament holden Anno 1 H. 7. a like Act was made for the grant of the Subsidies of Tunnage and Poundage to him for his life.  
x And the like Subsidy was granted to King H.8. at the Parliament holden Anno 1. of his Reign for his life.



The like grant was made to E. 6. Queen Mary, Queen Eliz. and King James for their several lives, and in all these it is affirmed, that the like grants were made by Act of Parliament to King H. 7. and King H. 8. 1 E. 6. c. 13. 1 Mar. cap. 18. 1 El. c. 19 1 Jac. cap. 33.

The consideration of the grant of these Subsidies of Tunnage and Poundage is ever, as is aforesaid, expressed in the grant for the keeping and safeguard of the Seas, and for intercourse of merchandize safely to come into this Realm, and safely to pass out of the same. And this pertaineth properly to the office of the Lord Admiral to see the consideration of the Act to be performed. \* They are granted of the free good will of the Subjects, and so expressly set down in the Parliament Roll. \* Rot. Par. 11 H. 4. n. 45. 13 H. 4. n. 10.

In King James his Reign, when I was a Commissioner of the Treasury, these Subsidies granted for life amounted to One hundred and threescore thousand pounds per annum, and so letten to farm. The values of the merchandize for the which the Subsidy of Poundage is paid, do appear in a book of rates in print, whereby the Merchant knows what he is to pay. The Subsidy of Tunnage of wine is certain in these Acts by the contents of the Vessels: and none of these Acts do extend to any other liquid merchandize imported or exported, but unto wines only: and seeing nothing is more uncertain then the continuance of the value of merchandizes whereof the Subsidy of Poundage is paid, it were good at every grant of them to set down the rates in a schedule annexed to the bill. A Book of rates or values.

*Subsidies temporary and usual at this day.*

Subsidies temporary and usual at this day. And this is when the Commons in Parliament freely grant to the King an aid to be levied of every Subject of his lands or goods after the rate of 4 s. in the pound for lands, and 2 s. 8 d. for goods, and for Aliens for goods double, to such ends and for such considerations, and to be paid at such times, as by the Acts thereof (which are usual and frequent) do appear. And in former times in this kind of Subsidy, this order was observed, that over and above the Subsidy of Tunnage and Poundage, the Commons never gave above one Subsidy of this kind, and two Fifteens, (and sometime less) one Subsidy amounting to Seventy thousand pounds, and each Fifteen at Twenty nñe thousand pounds, or near thereabouts; nor above one Subsidy, which did rise to Twenty thousand pounds, the Clergy gave not.

At the Parliament holden in 31 Eliz. the Commons gave two Subsidies, and four Fifteens, which first brake the circle.

In 35 Eliz. three Subsidies and six Fifteens.

In 39 Eliz. three Subsidies and six Fifteens.

In 43 Eliz. four Subsidies and eight Fifteens, &c.

In 21 Jac. Regis, three Subsidies and six Fifteens in shorter times then had been before.

In 3 Car. Regis, five Subsidies in shortest time of all.

And it is worthy of observation how quietly Subsidies granted in forms usual and accustomed (though heavy) are born; such a power hath use and custom: On the other side, what discontentments and disturbances Subsidies framed in new molds do raise, (such an inbred hatred novelty doth hatch) is evident by examples of former times.

As that of 4 R. 2. a new invention of Subsidies of the Kings Subjects of either sex by the poll, &c. for the furnishing of the Earl of Buckingham for his going into France, whereupon a strong and a strange Rebellion ensued, wherein three great and worthy Officers were by the rascal Rebels barbarously and wickedly murdered, viz. Simon Sudbury Archbishop of Canterbury, Chancellor of England, the Prior of S. Johns of Jerusalem, Treasurer of England, and Sir John Cavendish, Chief Justice of England. Rot. Par. 4 R. 2. nu. 15. 5 R. 3. nu. 32.

In 4 H. 7. another like new found Subsidy was granted, which raised a rebellion in the North, in which the noble Earl of Northumberland a Commissioner in that Subsidy, was by the Rebels cruelly and causelessly slain. Hollensh. Chron. 769.

In



Hollensh. Chron.  
891.

In Anno 16 H.8. to furnish the King for his going in his royal Person into France, a new device for getting of money was set on foot, which made the headless and headless multitude to rise in rebellion, until Charles Brandon the noble Duke of Suff<sup>r</sup> quieted, and dispersed them.

Rot. Par. 9 E. 3.  
nu. 9.

At the Parliament holden in 9 E.3. when a motion was made for a Subsidy to be granted of a new kind, the Commons answered, that they would have conference with those of their several Countries and places, who had put them in trust, before they treated of any such matter.

9 H. 6. nu. 15.  
10 H. 6. nu. 50.

Vide 9 H.6. n.15. Every Knights fee to pay 20 s. and so according to the value under or over, and so of the Clergy for lands purchased since 20 E.1. And all other having 20 l. lands not holden as is aforesaid, 20 s. &c. This whole Subsidy for certain doubts the King utterly released, so as there is no mention made of the same: But hereof thus much shall suffice.

Sæpe viatorem nova, non vetus orbita fallit.

### Of Fifteens, Quinzims, &c.

Fifteens, Quinzim  
or Task, or Quinta  
decima.

A Fifteen is a temporary Aid granted to the King by Parliament, which without further inquiry is certain, and therein differeth from the Subsidy, which is ever uncertain, until it be assessed.

Second part Inst.  
Mag. Cart. cap. ult.

The Fifteen of ancient time was the fifteenth part of goods moveable, but in 8 E.3. all the Cities, Boroughs, and Towns in England were rated certainly at the fifteenth part of the value at that time generally upon the whole Town, whereof you shall read more at large in the Second part of the Institutes, in the last Chapter of Magna Carta, Verb. Quintam decimam partem bonorum mobilium.

### Of Tenths.

\*Doomsday. Norf.  
in Wanelunt, i.  
Wayland, & ibid.  
in Frebringe in  
Maffingham, &c.

There is decima pars of the Laity, and for the most part of Cities and Boroughs by their goods (Vid. 1. R. 2. nu. 26.) which proportionably is, secundum decimam quintam partem. That which we call Tax, Tallage, Tenth, and Fifteen, the Saxons called Geldinn, \* we use the word changing g to y, for gelding, yeilding, &c.

\* Rot. Par. 11 R. 2.  
nu. 11.

So \* Subsidy before the end of the Parliament, because it is to accompany the pardon.

Rot. Par. 2 H. 5. n. 20  
1 H. 6. n. 46. 3 H. 7  
to the Queen, 6 H.  
8. to the Duke of  
Suff.

This is contained in the Act of Subsidy, and so an Act of Parliament: and accordingly Subsidies, &c. have been granted, as in the book of Statutes appeareth.

### Of Acts of Parliament of confirmation of Letters Patents.

We have read of particular Acts of confirmation of Letters Patents; but the first of lands, &c. that was the more general, was the Statute of 31 H.8. c. 13. of Monasteries (to make those lands the more passable) but after that, general Acts of confirmation of Letters Patents have been very frequent.

### How the Lords give their voices.

Rot. Par. 6 H. 6.  
nu. 27.

In the Lords House, the Lords give their voices from the puiſne Lord seriatim by the word of [content,] or [not content.]

How many Lords  
Spiritual in former  
times.

A bill was preferred at the Parliament holden in Anno 6 H. 6. that no man should contract or marry himself to any Queen Dowager of England without special licence and assent of the King, on pain to lose all his goods and lands. The Bishops and Clergy assented to this Bill, by the word of [content,] as far forth as the same swarved not from the Law of God and of the Church, and so as the same imported no deadly sin. At this time there were besides the Archbishops and Bishops, 27 Abbots and 2 Priors, (albeit in truth the number was many times uncertain, as in the close Roll it appeareth) which severally held per



per Baroniam, and were Lords of Parliament, and so continued until they were dissolved in the Reign of H.8. The entry of the said Act of 6 H. 6. in the Roll is: It is enacted by the King, Lords Temporal, and Commons, that no man should contract or marry himself to any Queen of England, without the special license and assent of the King, on pain to lose all his goods and lands. The Bishops and Clergy assented to this Bill, as far forth as the same swerved not from the Law of God, and of the Church, and so as the same imported no deadly sin.

This is holden to be an Act of Parliament: First, For that the assent of the Clergy could not be conditional. Secondly, It was not against the Law of God nor of the Church, nor imported any deadly sin to make this Law by authority of Parliament, as it appeareth by Magna Carta cap. 7. which had by 32 Acts of Parliament been confirmed, and many others.

This Law was made after the marriage of Queen Katherine Dowager of H.5. with Owen ap Meredith ap Grono (descended of the Princes of Wales) by whom she had issue Edmond of Hadham aforesaid, Earl of Richmond, and Jasper of Hatfield, after Earl of Pembroke, and Duke of Bedford.

#### *How the Commons give their voices.*

The Commons give their voices upon the question, by *Pea* or *No*; and if it be doubtful, and neither party yield, two are appointed to number them; one for the *Pea*, another for the *No*: the *Pea* going out, and the *No* sitting: and thereof report is made to the House. At a Committee, though it be of the whole House, the *Peas* go of one side of the House, and the *Noes* on the other, whereby it will easily appear which is the greatest number.

#### *How Parliaments succeed not well in five Cases.*

It is observed by ancient Parliament men out of Record, that Parliaments have not succeeded well in five Cases. 1. When the King hath been in displeasure with his Lords, or with his Commons. 2. When any of the Great Lords were at variance between themselves. 3. When there was no good correspondence between the Lords and the Commons. 4. When there was no unity between the Commons themselves. 5. When there was no preparation for the Parliament before it began.

*a* For the first: So essential is the Kings good will towards his Commons, that it was one of the petitions of the Commons to the King, that he would requite the Archbishop and all other of the Clergy to pray for his estate, for the peace and good government of the land, and for the continuance of the Kings good will towards his Commons: whereunto the thrice noble King assented with these effectual words, The same prayeth the King: and many times the like petitions for the Lords. *b* How the King in all his weighty affairs had used the advice of his Lords and Commons, (so great a trust and confidence he had in them.) Always provided, that both Lords and Commons keep them within the circle of the Law and custom of the Parliament.

*c* For the second: At the Parliament holden in 4 H. 6. what variance was there between the Duke of Gloc. and the B. of Winchester, and their friends on either side? The success was, that little was done in any Parliamentary course at that Parliament, and that little was of no moment.

*d* At the Parliament holden in the 3d year of H. 6. the great controversie was between John Earl Marshall, and Richard Earl of Warwick with like success.

*e* The like controversie between William Earl of Arundel and Thomas Earl of Devon, for superiority of place, with like event. And many more might be cited.

*f* And always in the beginning amity was made between the Grandees of the Realm by shaking of hands and kissing, and sometime by \* submission.

For the third: When it was demanded by the Lords and Commons what might be a principal motive for them to have good success in Parliament, it was answered, *Eritis insuperabiles, si fueritis inseparabiles*. *Explosum est illud div-verbium: Divide, & impera: cum radix & vertex imperii in obedientium consensu rata sunt.*

Pl com. 125. mis-taketh it, and that the Clark number them.

*a* Rot. Parl. 37 E. 3. n. 2. and the Writ to the Clergy, *De orando pro Rege & Regno*, which was usual in those days

*b* Rot. Parl. 43 E. 3. n. 1. 25 E. 3. n. 15. 50 E. 3. nu. 2.

*c* Rot. Parl. 4 H. 6. n. 12. See the Acts of that Parliament.

*d* Rot. Parl. 3 H. 6. n. 1. & 10.

*e* Rot. Parl. 27 H. 6. n. 18.

*f* Rot. Parl. 2 H. 4. n. 14. 5 H. 4. n. 18. 20.

\* Rot. Parl. 21 R. 2. by the Count of Arundell to the D. of Lancast. 4 H. 6. nu. 12.



Rot. Parl. Anno 11  
H. 4. n. 10. the King  
desired this unity.  
20 Judicum.

For the fourth: Unity between the Commons them selves. It is most necessary in both these, and agreeable to the Parliament in the Book of Judges. Quali homo unus, eadem mente, uno consilio.

1 Chron. cap 28.

For the fifth: The Summons of Parliament is by forty days or above before the sitting, to the end that preparations might be had for the arduous and urgent affairs of the Realm: and that both the King, according to the example of King David, and likewise the Nobles and Commons should prepare; for preparata meditationes sunt semper saniores & meliores quam properata; wherein both Houses may greatly expedite the business of the Commonwealth in Parliament, if they will pursue the ancient custom of Parliament, viz. in the beginning thereof to appoint a select Committee to consider of the Bills in the two last Parliaments that passed both Houses, or either of them, and such as had been preferred, read, or committed, and to take out of them, such as be most profitable for the Commonwealth.

### The honour and antiquity of the Parliament.

7 H. 6. 28 L. 1. f. 14  
Inter leges Ed-  
wardi Regis, c. 8.

For the honour and antiquity of the Parliament, see the first part of the Institutes, Sect. 164. Verb. Veigne les Burgeses, and in the Preface to the ninth Book of my Reports, fol. 1, 2, 3, 4, &c. whereunto you may add, Inter leges Edwardi Regis, cap. 8. De decimis Ecclesie reddendis, Sect. De apibus vero, &c. Hec enim predicavit beatus Augustinus, & concessa sunt à Rege Baronibus & populo. A grant by express Act of Parliament. Vide infra, cap. 79. pag.

### The power and jurisdiction of the Parliament.

a See 13 El. cap. 1  
39 H. 6. 15.  
Vide infra. c. 79.

b Fortesc. c. 18.

c Virgil.

d Rot. Parl. 12 E. 4.  
nu. 20, 21, 22. the  
case of the wives  
of the Duke of  
Clarence and Glo-  
cester.

e 12 E. 4. nu. 34.  
Duke of Bucking-  
ham.

f 21 R. 2. n. 27. Sir  
Ro. Plesington.  
31 H. 6. cap. 1.

g This is usual in  
many Parliaments.

h Rot. Parl. 5 & 6 E.  
6. the L. Marquis  
of Winchester's case.

i Rot. Parl. An. 20  
R. 2. m. 6.

k Beaufort came to  
the House of Lanc.  
by marriage be-  
tween Blanch of  
Artois and Edmond  
first Earl of Lanc.  
l Rot. Parl. 20 R. 2.

mem. 7. m This John in An. 21 R. 2. was created Earl of Somerset, and Marquis Dorset. But in 1 H. 4. the Marquishe was taken away by Parliament. n This Henry was after Bishop of Winchester, Cardinal of S. Euseby, and Chancellor of England. o This Thomas was in 21 R. 2. created Earl of Dorset. p For Domicellus, &c. see Lamb. inter leges Edm. fo. 139. b Nos indiscrete domicellos de pluribus dicimus, quia Baronum filios vocamus domicellos, Angli vero nullos, nisi natos regum. q Joane was first married to Ralph the first Earl of Westmerland, and after to Robert Ferrers L. of Ouseley.

avunculi

a Of the power and jurisdiction of the Parliament, for making of Laws in proceeding by Bill, it is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds. Of this Court it is truly said: b Si antiquitatem spectes, est vetustissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima.

c Huic ego nec metas rerum, nec tempora pono.

Yet some examples are desired, d Daughters and Heirs apparent of a man or woman, may by Act of Parliament inherit during the life of the Ancestors.

e It may adjudge an Infant, or Minor of full age.

f To attain a man of Treason after his death.

g To naturalize a meer Alien, and make him a Subject born. h It may bastard a child that by Law is legitimate, viz. begotten by an Adulterer, the husband being within the four Seas.

To legitimate one that is illegitimate, and born before marriage absolutely. And to legitimate secundum quid, but not simpliciter. As to take one example for many.

i John of Gaunt Duke of Lancaster had by Katherine Swinford before marriage four illegitimate children, viz. Henry, John, Thomas, and Joane. And because they were born at k Beaufort in France, they were vulgarly called Henry de Beaufort, &c. John before the 20 year of R. 2. was knighted, and Henry became Priest. l At the Parliament holden 20 R. 2. the King by Act of Parliament in form of a Charter doth legitimate these three sons, and Joane the daughter: and the Charter beginneth thus. Rex, &c. Charissimis consanguineis nostris nobilibus viris m Johanni Militi: n Henrico Clerico: o Thomæ p domicello, ac dilectæ nobis nobili mulieri q Johannæ Beaufort domicellæ, Germanis præcharissimi avunculi nostri, Johannis Ducis Lancastriæ natis ligeis nostris Salutem, &c. Nos dicti



avunculi nostri genitoris vestri precibus inclinati, vobiscum qui (ut asseritur) defectu natalium patimini, ut hujusmodi defectu (quem ejusq; qualitatis quasq; præsentibus habere volumus pro sufficienter expressis) non obstante ad quæcunque honoris dignitates, (\* excepta dignitate regali) præheminentias, status, gradus, & officia publica & privata tam perpetua quam temporalia, atq; feudal' ac nobil' quibuscunque nominibus nuncupantur, etiamli ducatus, principat, comitat, Baronia, vel alia feuda fuerint, etiamli mediate, vel immediate, vel à nobis dependeant seu teneantur, præfici, promoveri, eligi, assumi & admitti, illaq; recipere, retinere, perinde libere & licite valeatis, ac si de legitimo thoro nati existeretis, quibuscunque statutis seu consuetudinibus regni nostri Angliæ in contrarium edicis seu observatis (quæ hic habemus pro taliter expressis) nequaquam obstantibus; de plenitudine nostræ regalis potestatis, ac de assensu Parliamenti nostri tenore præsentium dispensamus, vosque & vestrum quemlibet Natalibus restituimus, & legitimamus. In cujus rei testimonium. Teste Rege apud Westm. 9 die Febr. Per ipsum regem in Parlamento.

In this Act are divers things worthy of observation. 1. The names whereby they were legitimated. 2. That this legitimation was not simpliciter, but secundum quid: for they were legitimated and made capable of all dignities except the Royal Dignity: so as this legitimation extended not to make them or their posterities inheritable to the Crown, but to all other dignities. 3. That before their legitimation, they were not created to any of their dignities. 4. The brief and artificial penning of this legitimation, with general words, as if the particularity were expressed, and with a brief non obstante, and with as little blemish as may be. 5. And hereby it appeareth, that a H.7. being son of Edmond of Hadham, Earl of Richmond, and Margaret his wife, Daughter and Heir of John de Beaufort, D. of Somerset: which Margaret lineally descended from the said John de Beaufort, legitimated and made capable of all Dignities, as is aforesaid, excepta regali dignitate, that the best title of H.7. to the Crown, was by Elizabeth his Wife, eldest Daughter of E.4. Yet before this Marriage the Crown was by Act of Parliament intailed to H.7. and to the heirs of his body, the right of the Crown then being in the said Elizabeth, eldest Daughter of E.4. 6. In this Act, the said Thomas before his legitimation could not be called Esq; and therefore he hath this addition of \* Domicello, either derived of the French word Domoicell, which signifieth a young Souldier not yet knighted, or signifieth nobly born. And note, Johan. the Daughter, had the addition of De Beauford and Domicella in that sense also.

b And albeit I find an attainder by Parliament of a subject of High Treason being committed to the Tower, and forth coming to be heard, and yet never called to answer in any of the Houses of Parliament, although I question not the power of the Parliament, for without question the attainder standeth of force in Law: yet this I say of the manner of proceeding, Auferat oblivio, si potest; si non utrunque silentium tegat: for the more high and absolute the Jurisdiction of the Court is, the more just and honourable it ought to be in the proceeding, and to give example of Justice to inferiour Courts. But it is demanded, since he was attainted by Parliament, what should be the reason that our Historians do all agree in this, that he suffered death by a Law which he himself had made? For answer hereof, I had it of Sir Thomas Cawdye Knight, a grave and reverend Judge of the Kings Bench, who lived at that time, that King H.8. commanded him to attend the chief Justices, and to know whether a man that was forth coming might be attainted of High Treason by Parliament, and never called to his answer. The Judges answered, that it was a dangerous question, and that the High Court of Parliament ought to give examples to inferiour Courts for proceeding according to Justice, and no inferiour Court could do the like; and they thought that the High Court of Parliament would never do it. But being by the express commandment of the King, and pressed by the said Earl to give a direct answer: they said, that if he be attainted by Parliament, it could not come in question afterwards, whether he were called or not called to answer.

a Nota, pro corona Rot. Parl. Anno 1 H.7. not in print. 7 H.4. cap.2. the like to H.4. the right of the Crown being then in the descent from Philip, Daughter and Heir of Lionel Duke of Clarence.

Vid. 1 H.7. 12, 13. 25 H.8. cap.22. repeal by 28 H.8. cap.7. & 1 Mar. Parl. 1. cap.1.

See 13 Eliz. ca.1. in principio.

\* See Hovenden, pag. 608. for this word Domicel.

b Rot. Parl. 32 H.8. The attainder of Tho. Cromwell Earl of Essex.



And albeit their opinion was according to Law, yet might they have made a better answer, for the Statutes of Mag. Cart. ca. 29. 5 E. 3. cap. 9. & 28 E. 3. cap. 5. no man ought to be condemned without answer, &c. which they might have certified, but facta tenent multa, quæ fieri prohibentur; the Act of Attainder being passed by Parliament, did bind, as they resolved. The party against whom this was intended, was never called in question, but the first man after the said resolution, that was so attainted, and never called to answer, was the said Earl of Essex; whereupon that erroneous and vulgar opinion amongst our Historians grew, that he died by the same Law which he himself had made. The rehearsal of the said Attainder can work no prejudice, for that I am confidently perswaded, that such honourable and worthy members shall be from time to time of both Houses of Parliament, as never any such Attainder, where the party is forth coming, shall be had hereafter without hearing of him.

*a Lex Divina.*

John 7. v. 15.

Deut. c. 17. v. 10.

& cap. 19. v. 15.

Mat. Par. 18 Jo-

hannis 273.

*Inciuit videtur & contra Canones esse in hominem absentem non vocatum, non convictum nec confessum, ferre sententiam. Hereof see paulo postea.*

*b Acts 25. 16.*

Gen. 3. 9. Dixit do-

minus, Adam ubi

es. Vide Gen. 18.

21. Ecclesiasticus

11. 7, 8.

*c Praxis Sanctorum.*

Joshua 7. 19, 22, 23.

&c.

*d Jude 20. 3.*

*e Rot. Parl. 2. H 6.*

nu. 18.

*a* Nunquid lex nostra judicat hominem, nisi prius audierit ab ipso, & cognoverit quid faciat? Doth our Law judge any man before it hear him and know what he doth? *b* It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have licence to answer for himself concerning the crime laid against him.

*c* Ait Josua ad Acab, Fili mi, da gloriam domino Deo Israel, & confitere mihi quid feceris, ne abscondas.

*d* Interrogatus Levita maritus mulieris interfectæ quomodo tantum scelus perpetratum esset, &c. And the conclusion is after hearing and discerning the cause, Consider, consult, and then give sentence.

*e* And as evil was the proceeding in Parliament against Sir John Mortimer, third son of Edmond the second Earl of March, (descended from Lionel Duke of Clarence) who was indicted of High Treason for certain words, in effect, that Edmond Earl of March should be King by right of Inheritance, and that he himself was next rightful heir to the Crown after the said Earl of March, wherefore if the said Earl would not take it upon him, he would: and that he would go into Wales, and raise an Army of 20000 men, &c. which Indictment (without any arraignment or pleading) being merely saigned to blemish the title of the Mortimers, and withall being insufficient in Law, as by the same appeareth, was confirmed by Authority of Parliament: and the said Sir John being brought into the Parliament without arraignment or answer, Judgment in Parliament was given against him upon the said Indictment, That he should be carried to the Tower of London, and drawn through the City to Tyburn, and there hanged, drawn and quartered, his head to be set on London-Bridge, and his four quarters on the four gates of London, as by the Record of Parliament appeareth.

### The proceeding in Parliament against Absents.

The ancient Law and Custom of the Parliament was, that when any man was to be charged in Parliament with any crime or offence, or misdemeanour, the Kings Writ was directed to the Sheriff to summon and injoin the party to appear before the King in the next Parliament. For example.

Placita in Parlamento domini Regis, Anno E. 1. 33. Northampt.

**D**ominus Rex mandavit Vic' quod assumptis secum quatuor de discretioribus & leg' militibus Com' sui in propria persona sua accederet ad Nicolaum de Segrave, & ipsum in presentia prædictorum militum summon' & ex parte domini regis firmiter ei injungeret quod esset coram domino Rege in proximo Parlamento suo apud Westm' in primo adventu domini Regis ibidem ad audiendam voluntatem ipsius domini Regis super hiis, quæ tunc ibidem proponere intenderet vers. eum, & ad faciendum & recipiendum ulterius quod curia domini Regis consideraret in præmissis. Et Vic' modo mandavit quod assumptis secum Thoma Wale, Waltero filio Roberti de



de Darenty, Roberto de Gray de Wollaston, & Radulpho de Normavill quatuor milit', &c. in propria persona sua accessit apud Stowe ad manerium predicti Nicholai, & in presentia eorundum militum summon' predictum Nicholaum, & ei firmiter injunxit quod esset coram Domino Rege in isto Parlamento nunc juxta formam & tenorem mandati præd', &c.

Almaricus de Sancto Amando, Magister Johannes de Sancto Amando, Willielmus de monte acuto, Richardus Atteham Constabularius castri Oxon' Rich. de Hurle, Thomas de Carleton capellanus, Johannes de Ros, Johannes de Trenbrigg, Willielmus Attewarde frater ejus, & Philippus de Wigenton attackiat' fuerunt per Vic' in castro Oxon' per præcept' Domini Regis responsur' eidem Domino Regi in Parlamento suo in Crastino Sancti Mathæi Apostoli Anno regni sui xxxiiij. super quibusdam criminibus & transgressionibus infra scriptis, & inde per manucaptionem sufficient' adjornat' coram ipso Domino Rege hic ad hunc diem, scilicet a die Pasche in xv dies, &c.

¶ A writ might be directed to the party himself, when any complaint was made against him, De injuriis, gravaminibus, aut molestationibus, to appear in his proper person before the King and his Council. As for example :

Dominus Rex mandavit breve suum Roberto de Burgkersh in hæc verba. Edwardus Dei gratia, &c. Dilecto & fideli suo Roberto de Burgkersh Constabular' castri sui Dover & custod. suo quinque portuum, Salutem. Quia dilectus nobis in Christo Abbas de Faversham & Robertus de Gurne ballivus suus ejusdem ville coram concilio nostro apud Eborum existente de diversis injuriis, gravaminibus & molestationibus eis per vos voluntar' & absq; causa rationabili multipliciter illatis graves querimonias deposuerunt, petentes instanter ut eis super hoc fieri faceremus remedium opportunum : propter quod dedimus eis diem coram nobis & concilio nostro a die Pasche in xv dies, &c. ad querelas suas predictas tunc ostendend', & ad faciend' super hoc ulterius & recipiend' quod Justitia suaderet : Vobis mandamus, quod in propria persona vestra sitis coram nobis & concilio nostro ad diem predict' præfatis Abbati & ballivis suis super præmissis respons. factum' & receptur' quod curia nostra consideraverit in hac parte, & ab injuriis, gravaminibus, molestationibus & districtiõibus indebitis præfatis Abbati & ballivis suis interim inferendis penitus desistendo. Et habeatis ibi hoc breve. Teste meipso apud Linliscum xxx die Januarii, Anno Regni nostri xxx. Virtute cujus brevis predictus Robertus venit, & breve illud protulit ad diem in eodem contentum. Et predictus Abbas venit & querelas suas protulit in quodam rotulo scriptas, & quas in curia hic querelando ostendit & legere fecit, de quibus prima est hæc, &c.

Placita coram domino Rege, Pasch 33 E. 1. Rot. 19. Oxon.

Placita coram Rege apud Cantuar' de Termino Pasch. Anno regni regis E. 1. 37. Continile breve ubi supra eidem Roberto de Burgkersh ad sectam Majoris & Baronũ quinque portuum.

How they which absent themselves shall be proceeded withall, Vide 50 E. 3. nu. 37. Adam Buries case, 2 parte Patent, 21 R. 2. nu. 15, 16. Rot. Par. 17 R. 2. nu. 28. 11 H. 4. nu. 37, 38. 15 H. 6. nu. 4. 33 H. 6. fo. 17. Sir John Pilkingtons case.

And where by order of Law a man cannot be attainted of High Treason, unless the offence be in Law High Treason, he ought not to be attainted by general words of High Treason by Authority of Parliament (as sometime hath been used) but the High Treason ought to be specially expressed, seeing that the Court of Parliament is the highest and most honourable Court of Justice, and ought (as hath been said) give example to inferiour Courts.

There was an Act of Parliament made in the 11 year of King H. 7. which had a fair flattering preamble, pretending to avoide divers mischiefs, which were, 1. To the high displeasure of Almighty God. 2. The great let of the

25 H. 8. cap. 1. a. Eliz. Barton, and others And see the Act of the Attainder of the Lord Cromwell, Anno 32 H. 8. ubi supra. A mischievous Act with a flattering Preamble in 11 H. 7



Common Law, and 3. The great let of the Wealth of this Land: And the Purview of that Act tended in the execution contrary, ex diametro, viz. to the high displeasure of Almighty God, the great let, nay the utter subversion of the Common Law, and the great let of the Wealth of this Land, as hereafter shall manifestly appear. Which Act followeth in these words :

11 H. 7. ca. 3.

**T**He King our Sovereign Lord calling to his remembrance, that many good Statutes and Ordinances be made for the punishment of Riots, unlawful Assemblies, reteinders in giving and receiving of Liveries, signs and tokens unlawfully, Extortions, Maintenances, Imbracery, excessive taking of Wages contrary to the Statute of Labourers and Artificers, the use of unlawful Games, inordinate Apparel, and many other great Enormities and Offences, which being committed and done daily contrary to the good Statutes, for many and divers behooful considerations severally made and ordained, to the displeasure of Almighty God, and the great let of the Common Law, and Wealth of this Land, notwithstanding that generally by the Justices of the Peace in every Shire within this Realm in the open Sessions is given in charge to enquire of many offences committed contrary to divers of the said Statutes, and divers Enquests thereupon there straitly sworn, and charged before the said Justices to enquire of the premisses, and therein to present the troth which any letted to be found by imbracery, maintenance, corruption and favour; by occasion whereof the said Statutes be not, nor cannot be put in due execution: For Reformation whereof, for so much that before this time the said offences, extortions, contempts, and other the premisses might not, nor as yet may be conveniently punished by the due order of the Law, except it were first found and presented by the verdict of twelve men thereto duly sworn, which for the causes afore rehearsed will not find nor yet present the truth: wherefore be it by the advice and assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by Authority of the same enacted, ordained and established, that from henceforth as well the Justices of Assise in the open Sessions to be holden afore them, as the Justices of Peace in every County of the said Realm, <sup>a</sup> upon Information for the King before them to be made, have full power and authority <sup>b</sup> by their discretion to hear and determine all offences and contempts committed and done by any person or persons against the form, Ordinance and effect of <sup>c</sup> any Statute made and not repealed, and that the said Justices upon the said Information have full power and authority to award and make like process against the said offenders and every of them, as they should or might make against such person or persons as been presented and indicted before them of trespasses done contrary to the Kings Peace, and the said offender, or offenders duly to punish according to the purport, form and effect of the said Statutes. Also be it enacted by the said authority, that the person which shall give the said information for the King, shall by the discretion of the said Justices content and pay to the said person or persons against whom the said information shall be so given his reasonable costs and damages in that behalf sustained, if that it be tried or found against him, that so giveth or maketh any

<sup>a</sup> Upon Information without any indictment.

<sup>b</sup> By their discretion, and not secundum legem & consuetudinem Angl. as all proceedings ought to be.

<sup>c</sup> Obsolete Statutes and all, and especially such as time had so altered from the original cause of the making thereof, as either they could not at all, or very hardly be observed and kept.



any such information. Provided always, that any such information extend not to treason, murder, or felony, nor to any other offence, wherefore any person shall lose life, or member, nor to lose by nor upon the same information any lands, tenements, goods or chattels to the party making the same information. Provided also, that the said informations shall not extend to any person dwelling in any other Shire, then there, as the said information shall be given or made, saving to every person and persons, Cities, and Towns, all their liberties and franchises to them and every of them of right belonging and appertaining.

But it extended to a Premunire, misprison of Treason.

By pretext of this Law Empson and Dudley did commit upon the Subject unsufferable pressures and oppressions, and therefore this Statute was justly soon after the decease of H. 7. repealed at the next Parliament after his decease, by the Statute of 1 H. 8. cap. 6.

1 H. 8. cap. 6.

A good caveat to Parliaments to leave all causes to be measured by the golden and straight merwand of the Law, and not to the incertain and crooked cord of discretion.

It is not almost credible to foresee, when any Maxim, or Fundamental Law of this Realm is altered (as elsewhere hath been observed) what dangerous inconveniences do follow, which most expressly appeareth by this most unjust and strange Act of 11 H. 7. for hereby not only Empson and Dudley themselves, but such Justices of Peace (corrupt men) as they caused to be authorized, committed most grievous and heavy oppressions and exactions, grinding of the face of the poor Subjects by penal Laws (be they never so obsolete or unfit for the time) by information only without any presentment or trial by Jury being the ancient birthright of the Subject, but to hear and determine the same by their discretion, inflicting such penalty, as the Statutes not repealed imposed: These and other like oppressions and exactions by or by the means of Empson and Dudley and their instruments, brought infinite treasures to the Kings Cofers, whereof the King himself in the end with great grief and compunction repented, as in \* another place we have observed.

See the 2. part of the Institutes W. 1 c. 26. See the Preface to the 4. part of the Reports. The dangers ensuing by alteration of any of the Maxims of the Law.

\* In the Chapter of the Court of Wards and Liveries.

This Statute of 11 H. 7. we have recited, and shewed the just inconveniences thereof, to the end, that the like should never hereafter be attempted in any Court of Parliament. And that others might avoid the fearful end of those two timeservers, Empson and Dudley. Qui eorum vultigia insistant, eorum exitus perhorrescant.

See the Statute of 8 E. 4. c. 2. the Statute of Liveries, an Information, &c. by the discretion of the Judges to stand as an original, &c. This Act is deservedly repealed.

Vide 12 R. 2. cap. 13. Punishment by discretion, &c. Vide 5 H. 4. cap. 6. 8. See the \* Commission of Sewers. Discretion ought to be thus described, Discretio est discernere per legem quid sit justum. And this description is proved by the Common Law of the land; for when a Jury do doubt of the Law, and desire to do that which is just, they find the special matter, and the entry is, Et super tota materia, &c. petunt discretionem Justiciariorum, and sometime, advisamentum & discretionem Justiciariorum in præmissis, &c. that is, they desire that the Judges would discern by Law what is just, and give judgment accordingly.

\* Lib. 5. fol. 100. Rooks case. Lib. 10. fol. 128. &c.

Pl. Com. 3. 8. Barnards case.



*Acts against the power of the Parliament subsequent bind not.*

1 H. 4. nu. 144.  
21 R. 2. nu. 20. re-  
pealed by 1 H. 4.  
c. 3. 1 H. 4. nu. 48.  
Vid. 7 H. 4. nu. 37.

An Article of the Statute made in 11 R. 2. c. 5. is that no person should attempt to revoke any Ordinance then made, is repealed, for that such restraint is against the jurisdiction and power of the Parliament, the liberty of the subject, and unreasonable. And likewise the last Will and Testament of King R. 2. under the Great Seal, Privy Seal, and Privy Signet, whereby he devised certain money, treasure, &c. to his successors upon condition to observe all the Acts and orders at the Parliament holden in Anno 21 of his Reign, was holden unjust and unlawful, for that it restrained the Sovereign liberty of the King his Successors.

21 R. 2. cap. 16.  
21 R. 2. nu. 44.

Sundry Lords of Parliament (but no Bishops) or six of them, and certain Knights or Shires of the Commons or two of them are authorized by Authority of Parliament to examine, answer and finally determine all the Petitions exhibited in that Parliament, and the matters contained in the same by their good advice and discretion, &c. The high power of a Parliament is to be committed to a few is holden to be against the dignity of a Parliament, and that no such Commission ought to be granted.

2 H. 1. c. 22. Vide  
21 R. 2. nu. 44.

An Act in 11 R. 2. c. 3. that no man against whom any judgment, or forfeiture was given should sue for pardon or grace, &c. was holden to be unreasonable without example, and against the Law and custom of Parliament, and therefore that branch by Authority of Parliament was annihilated, and made void.

26 H. 8. ca. 1. Acts  
of Parliament  
ought to be plain-  
ly, and clearly, and  
not cunningly and  
darkly penned,  
specially in crimi-  
nal causes.

Also I find that in times past the Houses of Parliament have not been clearly dealt withal, but by cunning artifice of words utterly deceived, and that in cases of greatest moment, even in case of High Treason, as taking one example for a warning in like cases hereafter.

\* 26 H. 8. cap. 1.  
\* 26 H. 8. c. 13.  
a By word, &c.  
this by construc-  
tion refers to the 2.  
clause.  
b Shadowed with  
the Queen or  
Prince.  
c Deprive, an ob-  
scure word.  
d Note this word  
[Title] in the for-  
mer Act.

King H. 8. after the Clergy of England had in their Convocations acknowledged him Supreme Head of the Church of England, thought it no difficult matter to have the same corroborated and confirmed by Authority of Parliament, but withal secretly and earnestly desired that the impugnors and deniers thereof, though it were but by word, might incur the offence of High Treason, and finding the one, that is, the acknowledgment of his Supremacy likely to have good passage, and having little hope upon that which he found to effect the other concerning High Treason, sought to have it pass in some other Act by words closely couched, though the former Act of Supremacy had been the proper place. \* And therefore in the Act of recognition of his Supremacy it is enacted, that he should have annexed and united to the Crown of this Realm the Title and Style thereof: \* and afterwards towards the end of the Parliament, a bill was preferred whereby many offences be High Treason, and there-  
by it is enacted, That if any person or persons by a word or writing, 1. Practise or attempt any bodily harm to the King, the b Queen, or their Heirs apparant, 2. Or to c deprive them or any of them, of their dignity, d title, or name of their Royal Estates, 3. Or that the King should be an e Heretique, Schismaticque, Tyrant, Infidel or Usurper of the Crown, &c. that every such person so offending should be adjudged Traytors, &c. So as now by this latter Act, he that by word or writing attempts to deprive the King of the Title of his Royal Estate is a Traytor, but the former Act had annexed to the Crown the Title of the stile of Supremacy, and therefore he that should by word or writing attempt to deprive the King thereof should be a Traytor. And f upon this Law of 26 H. 8. c. 13. for deny-  
ing of the Kings Supremacy divers suffered death as in case of High Treason, whereas all Laws, especially penal, and principally those that are penal in the highest degree g ought to be so plainly and perspicuously penned, as every Member of both Houses may understand the same, and according to his know-  
ledge and conscience give his voice. h Erit autem lex honesta, iusta, possibilis, secundum naturam & secundum consuetudinem patriæ, temporisque conveniens, necessaria & utilis, manifesta quoque, ne aliquid per obscuritatem incautum cap-  
tione

e Parker B. of  
Cant. Lib. de An-  
tiquitate Brit. Ec-  
clesiæ. Clerus animo  
toto obstupuit, non-  
dum enim quid sibi  
hic novus vellet  
titulus, aut quorsum  
tenderet, prospexit,  
&c.  
f But this Act li-  
ved not long, for  
twice it was re-  
pealed, viz. by 1 E.  
6. c. 12. & 1 Mar. c. 1.  
g What qualities  
Laws ought to  
have.  
h Isidor. 2 Erymol.



tione contradat, nullo privato commodo, sed pro communi civium utilitate conscripta, ideo in ipsa constitutione ista consideranda sunt, quia cum leges institutæ fuerint non erit liberum arbitrium judicare de ipsis, sed oportebit judicare secundum ipsas, which be excellent rules for all Parliaments to follow. But the Statute of 5 Eliz. c. 1. hath concerning the Supremacy dealt plainly and perspicuously as by the same appeareth.

5 Eliz. cap. i.

\* Exod. 4. 16. Tu

i. Moses eris ei, i.

Araron, in his que

ad Deum pertinent, &c. Exod. 32. 15, 16. Moses custos utriusque tabulæ. Numb. 10. 1, 2. Moses custos utriusque t. b.e. Joshua 24. 1. Congregavit Joshua, &c. 28. dimisit. 1 Chron. 15. 4. 1 Chron. 16. 43. Rex David. 2 Chron. 5. 2. Rex Solomon: 2 Chron. 29. 15. &c. Ezekias. Nota. 1 Sam. 15. 17. Et ait Samuel ad Saul, nonne cum parvulus esses caput in tribubus factus es? And the Tribe of Levi was one. 1 Maccab. 14. 4. See hereafter, cap. 74.

And albeit it appeareth by these examples, and many other that might be brought, what transcendent power and authority this Court of Parliament hath, yet though divers Parliaments have attempted to bar, restrain, suspend, qualifie, or make void subsequent Parliaments, yet could they never effect it, for the latter Parliament hath ever power to abrogate, suspend, qualifie, explain, or make void the former in the whole or in any part thereof, notwithstanding any words of restraint, prohibition, or penalty in the former: for it is a Maxim in the Law of the Parliament, Quod leges posteriores priores contrarias abrogant.

Subsequent Parliaments cannot be restrained by the former. 43 E. 3. c. 1. 11 H. 7. c. 1. 28 H. 8. c. 17. 1 E. 6. ca. 11. Lib. 4. fol. 46. the B. of Cant. case.

### Acts of Parliament enrolled in other Courts.

For the better observation of any Act of Parliament enacted by the Commonwealth, or of a Petition of Right, or Judgment in Parliament, or the like, and to encourage the Judges that the same may be duly executed, the same may be inrolled in the Courts of Justice in this manner. The tenor of the Record must be removed into the Chancery by Writ of Certiorari, and delivered into the Kings Bench by the hands of the Chancellor or Lord Keeper, and sent by Mittimus to the Court of Common pleas, and by like Mittimus into the Exchequer, and the King by his Writ may command any Court to observe and firmly to keep such an Act of Parliament, as it appeareth by these two precedents. Ex Rotulo Claus. An. 28 E. 1. m. 2. Dors. Rex Thesaurar & Baronibus suis de Scaccar Salutem. Quia volumus quod Magna Carta Domini Henrici quondam Regis Angliæ patris nostri de libertatibus Angliæ quam confirmavimus & etiam innovavimus in omnibus & singulis articulis suis firmiter & inviolabiliter observetur. Vobis mandamus quod Cartam prædictam in omnibus & singulis suis articulis quantum in vobis est coram vobis in dicto Scaccario observari faciatis firmiter & teneri. T. R. apud Dunfres 23 die Octobris.

Int. Placita Parl. 18 E. 1. Rot. 18. Ibid. 20 E. 1. Magnum Placitum int. Com. Gloc' & Com. Heref. & Essex irr. Rot. Claus. An. 28 E. 1. in Dors. irr. le Magna Carta. Pasch. 33 E. 1. Rot. Par. Nich. Seagraves case, Rot. 22 Tr. 12 E. 2. Rot. 60. de irr. Perition in Parliament, at banche le Roy.

Rex Justic' suis de Banco Salutem: Cum in alleviationem gravaminum quæ populus Regni nostri occasione guerrarum hæcenus toleravit, ac in emendationem statutus ejusdem populi, nec non ut ex hoc se exhibeat ad nostra servicia promptiorem, nobisque in agendis nostris libentius subsidium faciat in futurum, quosdam articulos eidem populo plurimum (annuente Domino) profuturos de gratia nostra speciali duxerimus concedendos. Vobis mandamus quod dictos articulos quos vobis mittimus sigillo nostro consignatos coram vobis in banco prædicto quantum in vobis est juxta vim, formam & effectum eorundem observari faciatis firmiter & teneri. T. R. apud Dunfres 30 die Octobris.

### Every Member of the Parliament ought to come.

Every Lord Spiritual and Temporal, and every Knight, Citizen and Burgesses shall upon Summons come to the Parliament, except he can reasonably, and honestly excuse himself, or else he shall be amerced, &c. that is, respectively, a Lord by the Lords, and one of the Commons by the Commons.

By the Statute of 6 H. 8. c. 16. no Knight, Citizen or Burgesses of the House of Commons shall depart from the Parliament without licence of the Speaker and Commons, the same to be entred of record in the Book of the Clerk of the Parliament, upon pain to lose their wages.

5 R. 2. Stat. 2. c. 4. Rot. Par. 31 H. 6. nu. 46. fines were set, &c. If any of the Lords or Commons come not, &c. they shall be fined.



Vld. 3 E. 18. sup.  
If any of the  
Lords or Com-  
mons depart, &c.  
they shall be fined  
1 & 2 Ph. & Mar.  
Rot. 48. ut sup.  
\* 5 R. 2. Stat. 2. C. 4.

If a Lord depart from Parliament without licence, it is an offence done out of the Parliament, and is finable by the Lords: and so it is of a Member of the House of Commons, he may be fined by the House of Commons. Vide 1 & 2 Ph. & Mar. coram Rege. Rot. 48. divers informations by the Attorney General for departing without licence, ut supra.

\* The punishment of Sheriffs for their negligence in returning of Writs, or for leaving out of their returns any City or Borough which ought to send Citizens and Burghesses.

*Advice concerning new and plausible projects and offers in Parliament.*

See before pag. 14.  
Rot. Par. 13 E. 3.

When any plausible project is made in Parliament to draw the Lords and Commons to assent to any Act (especially in matters of weight and importance) if both Houses do give upon the matter projected and promised their consent, it shall be most necessary, they being trusted for the Commonwealth, to have the matter projected and promised (which moved the Houses to consent) to be established in the same Act, lest the benefit of the Act be taken, and the matter projected and promised never performed, and so the Houses of Parliament perform not the trust reposed in them. As it fell out (taking one example for many) in the Reign of H. 8. On the Kings behalf the Members of both Houses were informed in Parliament, that no King nor Kingdom was safe, but where the King had three abilities. 1. To live of his own, and able to defend his Kingdom upon any sudden invasion or insurrection. 2. To aid his confederates, otherwise they would never assist him. 3. To reward his well deserving servants. Now the project was, that if the Parliament would give unto him all the Abbies, Priories, Friories, Pinneries, and other Monasteries, that for ever in time then to come, he would take order that the same should not be converted to private use: But first, that his Exchequer for the purposes aforesaid should be enriched. Secondly, The Kingdom strengthened by a continual maintenance of 40 thousand well trained souldiers with skilful Captains and Commanders. Thirdly, For the benefit and ease of the Subject, who never afterwards (as was projected) in any time to come should be charged with Subsidies, Fifteenths, Loans, or other common aids. Fourthly, Lest the honour of the Realm should receive any diminution of honour by the dissolution of the said Monasteries, there being 29 Lords of Parliament of the Abbots and Priors (that held of the King per Baroniam, whereof more in the next leaf) that the King would create a number of Nobles, which we omit. The said Monasteries were given to the King by authority of divers Acts of Parliament, but no provision was therein made for the said project, or any part thereof; \* only ad faciend' populum these possessions were given to the King his heirs and successors to do and use therewith his and their own wills, To the pleasure of Almighty God, and the honour and profit of the Realm.

27 H. 8. de mona-  
series, & 31 H. 8.  
c. 13. 32 H. 8. c. 14.  
\* 27 H. 8. cap. 28.

32 H. 8. c. 23. 50.

34 H. 8. c. 16. & 27.  
37 H. 8. cap. 24.

Now observe the Catastrophe; in the same Parliament of 32 H. 8. when the great and opulent Priory of Saint Johns of Jerusalem was given to the King, he demanded and had a Subsidy both of the Clergy and Laity. And the like he had in 34 H. 8. and in 37 H. 8. he had another Subsidy. And since the dissolution of the said Monasteries he exacted divers loans, and against Law received the same.

*Whom the King may call to the Lords House of Parliament.*

Rot. Claus. in dorf.  
10 H. 7. 20 Septeb.  
Writs to divers  
ad ordinem militiae  
de Balneis suscipiend'  
juxta antiquam  
consuetudinem in  
creatione usitatam.

If the King by his Writ calleth any Knight or Esquire to be a Lord of the Parliament, he cannot refuse to serve the King there in communi illo Concilio, for the good of his Country. But if the King had called an \* Abbot, Prior, or other regular Prelate by Writ to the Parliament to the Common Council of the Realm, if he held not of the King per Baroniam, he might refuse to serve in

\* Of regular Prelates that hold per Baroniam.

Parliament



Parliament, because quoad secularia, he was mortuus in lege, and therefore not capable to have place and voice in Parliament, unless he did hold per Baroniam, and were to that Common Council called by Writ, which made him capable: and though such a Prelat Regular had been often called by Writ, and had de facto had place and voice in Parliament, yet if in rei veritate he held not per Baroniam, he ought to be discharged of that service, and to sit in Parliament no more.

*a* For that the Abby of Leicester was founded by Robert Fitz Robert Earl of Leicester (albeit the Patronage came to the Crown by the forfeiture of Simon de Mountford Earl of Leic.) yet being a subjects foundation, it could not be holden per Baroniam, and therefore the Abbot had no capacity to be called to the Parliament, and thereupon the King did grant, quod idem Abbas & successores sui de veniendo ad Parliamenta & concilia nostra vel hæredum nostrorum quieti sint & exonerati imperpetuum.

*b* De jure & consuetudine Angliæ ad Archidiaconatum Cantuariensem, &c. Abbates, Priores, aliosq; Prælatos quoscunque per Baroniam de domino Rege tenentes pertinet in Parliamentis regis quibuscunque ut Pares regni prædicti personaliter interesse, ibiq; de regni negotiis ac aliis tractari consuetis cum cæteris dicti regni Paribus ac aliis ibidem jus interessendi habentibus consulere & tractare, ordinare, statuere, & diffinire, ac cætera facere quæ Parliamenti tempore ibid. immuniunt faciend.

No man ought to sit in that High Court of Parliament, but he that hath right to sit there: for it is not only a personal offence in him that sitteth there without Authority, but a publick offence to the Court of Parliament, and consequently to the whole Realm. But all the cases abovesaid, and others that might be remembred touching this point, as little Rivers do flow from the fountain of Modus tenendi Parliamentum, where it is said; Ad Parliamentum summoneri & venire debent ratione tenuræ suæ omnes singuli Archiepiscopi, Episcopi, Abbates, Priores, & alii majores cleri qui tenent per comitatum vel baroniam ratione hujusmodi tenuræ, & nulli minores, nisi eorum præsentia necessaria vel utilis reputetur, &c.

One rare and strange creation of a Lord regular of Parliament we cannot pass over, which was, That King H. 8. in the fifth year of his Reign, by his Letters Patents under the Great Seal, did grant unto Richard Banham Abbot of Tavestock in the County of Devon, being of his Patronage, and to the successors of the said Abbot, ut eorum quilibet, qui pro tempore ibidem fuerit Abbas, sit & erit unus de spiritualibus & religiosis dominis Parliamenti nostri, hæredum & successorum nostrorum, gaudend. honore, privilegio & libertatibus ejusdem.

By that which hath been said, it appeareth that this creation of a regular Lord of Parliament was void, for that the Abbot was neither Baro, nor had Baroniam; &c. And if the King might create Abbots or Priors Lords of Parliament in this manner, by the same reason he might create Deans and Archdeacons Lords of Parliament, which without question he cannot.

By the Act of Parliament of 10 H. 2. called the Assise of Clarendon, it is declared, Ut pars consuetudinum & libertatum antecessorum regis, viz. Henrici primi & aliorum, quæ observari debent in regno & ab omnibus teneri, viz. Archiepiscopi, Episcopi, & universæ personæ regni, qui de rege tenent in capite, habeant possessiones suas de rege sicut baroniam, & inde respondeant Justiciariis & Ministris regis, & sequantur & faciant omnes consuetudines regias, & sicut cæteri barones debent interesse judiciis Curie regis cum baronibus, quousq; perveniatur \* ad diminutionem membrorum vel ad mortem. So as by this Act a tenure of the King in chief was in equipage with a Barony.

And King John by his great Charter of liberties made Anno 17. of his Reign, granteth, Quod faciemus summoneri Archiepiscopos, Episcopos, Abbates, Comites, & Majores Barones regni singulatim per literas nostras. Out of this Clause we are to observe these things: First, that these Barons called here Majores, were Lords of Parliament, and called thereunto by the Kings Writ. Secondly, that they were called Majores comparatively, and that was in respect

And so it was adjudged in the Parliament at York. An. 12 E. 2. in the case of the Abbot of S. James, extra Northamp. Stanf. pl. cor. 153. a.

*a* Rot. pat. An. 26. E. 3. part 1. m. 22. See Rot. Clauf. in dorf. 11 E. 3. part 2. m. 11.

*Religious que teignont per Barony sont tenuz de venir au Parliament.*

Vid. ibid. 13 E. 3. part 2. m. 28. & 1. *b* Rot. pat. 11 R. 2. part 1. m. 2. Artic. 34.

Modus tenendi Parl. ca. 2.

This is *infra* explained by the Assise of Clarendon.

10 H. 2. cap. 17. Mat. Par. 97. Assisa de Clarendon.

Rot. Parl. 11 & 21 R. 2.

Carta libertat. a Rege Johanne Anno 17 regni sui concess. Mat. Par. 343.

of



\* Nota, a Knights fee is the service of a Knight, that is of a man at Arms, or of war. Hereof see the second part of the Infit. cap. de Militibus. 1 E. 2. Inter leges Edw. cap. 21. Ib. ca. 9. \* 1 Curiam Baronis Glanv. li. 8. cap. 11. acc<sup>t</sup>. Bract. li. 3. 154. b. Camd. Brit. 121.

of others which were called Barones minores, or Nobiles minores, and were Freeholders that \* hold by Knights Service and Ceuage. i. Servitium Scuti, of three sorts, viz. Milites, Armigeri, & Generosi. Knights, Esquires, and Gentlemen. These Barones minores were Lords of Mannors, and had not the dignity of Lords, but had Courts of their Freeholders, which to this day are called Court Barons, Curia Baroniar<sup>um</sup>. Of this Baron it is said in that Law made by King Edward before the Conquest: Barones qui suam habent \* Curiam de suis hominibus, videant ut sic de eis agant, quatenus erga Deum reatum non incurrant, & regem offendant.

Baro a Bar, Germanica lingua liberum & sui juris significat, 1. which agreeth well with that which hath been said. 2. That Baro major was called Baro major regni. 3. That every greater Baron was severally summoned by the Kings Writ, which continueth to this day.

### The fees of the Knights, Citizens, and Burgeses of Parliament.

First, for the Knight of any County it is 4 s. per diem, and so it hath been time out of mind, which is particularly expressed in many Records, but let us take one in hæc verba. Johannes Shordich unus militum comitatus Middlesex venientium ad Parliamentum tent<sup>us</sup> apud Westm<sup>onasterium</sup> in C<sup>on</sup>ro. Animarum ultim<sup>um</sup> præterit<sup>us</sup> habet allocationem 4 li. & 4 s. pro 21 diebus pro expensis suis veniendo ad Parliament<sup>um</sup> prædict<sup>um</sup> ibid. morando, & exinde ad propria redeundo, capiendo per diem 4 s. Teste Rege apud Westm<sup>onasterium</sup> 24 die Novemb. Anno 46. Every Citizen and Burgess is to have 2 s. per diem, ut supra, mutatis mutandis.

a Nota the Writ De expensis militum, &c. doth comprehend the sum according to the abovesaid computation, and a commandment to the Sheriff to levy the same, b De communitate comitatus prædict<sup>us</sup> tam infra libertates, quam extra. (Civitatis & Burgis de quibus cives & burgeses ad Parliamentum nostrum, &c. venerunt duntaxat exceptis.) The like Writs to the Sheriffs De expensis civium & Burgenium, to levy the same in Cities and Boroughs.

c An. 1 R. 2. nu. 11. the Commons petitioned in Parliament, that all persons having Lay fee might contribute to the charge of the Knights, and to all tallages. The King answered [The Lords of the Realm will not lose their old liberties.] Note the Writ is De communitate.

d Also there is a Writ in the Register De expensis militis non levandis ab hominibus de antiquo dñico, nec ab nativis. e Other discharges De expensis militum.

f For the wages of the Knights of the Shire of Cambridge see the Statute of 34 H. 8. cap. 24. Consimile pro Insula de Ely, &c.

g H. 4. An. 14. of his Reign summoned a Parliament C<sup>on</sup>ro Purificationis, and he deceased 20 Martii following, so as the Parliament was dissolved by his decease. Thereupon it was a question, whether the Knights and Burgeses should have their wages, seeing nothing passed in that Parliament. And it was resolved, that if upon view of the Kings b Records any like presidents may be found, allowances of their fees shall be made. i Also the Clergy were contributory by reason of their Benefices to the expences of the procurators of the Clergy.

k But Chaplains which are Masters of the Chancery and attendants at the Parliament, shall not be contributory by reason of their Benefices to the expences of the Clergy, as by the Register ubi supra appears: and this was by an Act of Parliament made in \* 4 E. 3. which in general words is recited in the Writ directed to the Archdeacon for their discharge.

h Nota, for presidents. i Regist. 261. F. N. B. 229. a. k Vid. supra pa. 4, 5. \* Parl. An. 4 E. 3. apud Winton whereof there is no Roll now remaining.

### Who be eligible to be a Knight, Citizen, or Burgess of Parliament.

See the Stat. of 5 R. 2. cap. 4. Vid. sup. pa. 4, 5. Rot brev. 7 R. 2.

A Knight Banneret being no Lord of Parliament is eligible to be Knight, Citizen or Burgess of the House of Commons being under the degree of a Baron, who is of the lowest degree of the Lords House. But Thomas Camois was not only,



only a Knight Banneret, but a Baron and Lord of Parliament in Anno 7 R. 2. and served in that Parliament as a Baron of the Realm, and therefore as of a thing notorious he was discharged. One under the age of 21 years is not eligible, neither can any Lord of Parliament sit there until he be of the full age of 21 years.

Dors. Claus. 7 R. 2.  
m. 10. & 37.

An Alien cannot be elected of the Parliament, because he is not the Kings liege Subject, and so it is albeit he be made Denizen by Letters Patents, &c. for thereby he is made quasi, seu tanquam ligeus; but that will not serve, for he must be ligeus revera, and not quasi, &c. And we have had such an one chosen and disallowed by the House of Commons, because such a person can hold no place of Judicature: but if an Alien be naturalized by Parliament, then he is eligible to this or any other place of Judicature.

Vi. Stat. de 1 Mar.  
cap.

But it is objected that Gilbert de Umphrevill Earl of Andgos in Scotland, was called by the Kings Writ to the Parliament in 39 E. 3. by the name of Gilbert Earl of Andgos: and in a Writ of Ravishment of Ward brought against him, by the name of Gilbert Umphrevill Chivaler, he pleaded to the Writ that he was Earl of Andgos not named in the Writ: and for that he was summoned to every Parliament by the name of the Earl of Andgos, and the King sent to him a Writ of Parliament under the Great Seal, as to a Peer of the land: by judgment of the Court the Writ did abate. We have searched for the truth of this case, and do find it in the Plea Rolls in this manner.

39 E. 3. 35, 36.

Richard de Umphrevill Baron of Prodhowe and Redefdale in the County of Northumberland, had issue Gilbert, who after the decease of his Father was a Baron of this Realm, and in the Reign of H. 3. married with Mawde daughter and heir of the Earl of Andgos in Scotland, who by her had issue Gilbert, who was Earl of Andgos as heir to his Mother, and Baron of Prodhowe and Redefdale as heir to his Father: he sat in Parliament upon summons by Writ in 27 E. 1. 28 E. 1. 30 E. 1. 35 E. 1. 1 E. 2. and 2 E. 2. by the name of Gilbert Earl of Andgos. Robert his son sat in Parliament, Anno 12 E. 2. by the same name of Dignity, and so forth, all E. the seconds Reign. And Gilbert his Son sat in Parliament in 6 E. 3. and in every Parliament following until, and in 4 R. 2. by the same name. And in Gilbert his Son (who deceased in Anno 15 H. 6.) that surname of Umphrevill ceased. Hereby it appeareth that the said Richard Umphrevill and his posterity, from whence soever they originally descended, were liege Englishmen: for if they had been Aliens, they could not have enjoyed the Lordships of Prodhowe, Otterborne, Harbottle, and Redefdale in England, nor the Barony of Kime in Lancashire, which the two last Gilberts enjoyed. And note, the Book in 39 E. 3. concludeth, that Gilbert Umphrevill was summoned to the Parliament under the Great Seal, Come un Pier del Realme.

All this doth appear in the Rolls of Parliament in all the several times.

These two were commonly called the Earls of Kime.

A Bishop elect may sit in Parliament as a Lord thereof.

Hil. 18 E. 1. fo. 4.  
nu. 105.

### Of Knights, Citizens and Burgeses of Parliament.

None of the Judges of the Kings Bench or Common Pleas, or Barons of the Exchequer that have judicial places can be chosen Knight, Citizen or Burgeses of Parliament, as it is now holden, because they be assistants in the Lords House; and yet you may read in the \* Parliament Roll, An. 31 H. 6. that Thorp Baron of the Exchequer was Speaker of the Parliament. But any that have judicial places in the Court of Wards, Court of Duchy, or other Courts Ecclesiastical or Civil, being no Lord of Parliament are eligible.

\* Rot. Par. 31 H. 6.  
nu. 26, 27, 28.  
Note, he could not be Speaker unless he were Knight of the Shire, &c. in the book of Burgeses of the House of Commons.

None of the Clergy, though he be of the lowest Order, are eligible to be Knight, Citizen, or Burgeses of Parliament, because they are of another body, viz. of the Convocation.

a Alexan. Nowels case, who after was Dean of Pauls being a Prebend. 1 Mar.

A man attainted of Treason or Felony, &c. is not eligible: for concerning the election of two Knights, the words of the Writ be, Duos milites gladiis cinctos magis idoneos, & discretos eligi fac. And for the election of Citizens and Burgeses



the words of the Writ he, Duos, &c. de discretioribus & magis sufficientibus, which they cannot be said to be when they are attainted of Treason or felony, &c.

Mayors and Bailiffs of Towns Corporate are eligible against the opinion in Brook, Anno 38 H.8. tit. Parliament.

Any of the profession of the Common Law, which is in practise of the same, is eligible. For he which is eligible of common right cannot be disabled by the said Ordinance in Parliament in the Lords House in 46 E. 3. unless it had been by Act of Parliament: And if it had been by Authority of Parliament, yet had the same been abrogated by the said Statutes of 5 R.2. Stat. 2. cap. 2. and 7 H. 4. cap. 15. which are general Laws without any exception, as hath been said.

Rot. Par. 46 E. 3.  
nu. 10.

5 R. 2. Stat. 2. ca. 4.  
7 H. 4. ca. 15.

Rot. Claus. Anno  
6 H. 4.

See before pa. 10.  
4 Petty Acts passed at this Parliament of little or no effect, as by the same appears.  
Rot. Par. 50 E. 3.  
nu. 83. an Ordinance that no Sheriff should be Justice of Peace, &c. bound nor the subject until a statute made 1 Mar. c. 8.

At a Parliament holden at Coventry Anno 6 H. 4. the Parliament was summoned by Writ (and by colour of the said Ordinance) it was forbidden, that no Lawyer should be chosen Knight, Citizen or Burgess, by reason whereof this Parliament was fruitless, and never a good Law made thereat, and therefore called Indoctum Parliamentum, or Lack-learning Parliament. And seeing these Writs were against Law, Lawyers ever since (for the great and good service of the Commonwealth) have been eligible: for, as it hath been said, the Writs of Parliament cannot be altered without an Act of Parliament: and albeit the prohibitory clause had been inserted in the Writ, yet being against Law, Lawyers were of right eligible, and might have been elected Knight, Citizen or Burgess in that Parliament of 6 H. 4.

By special order of the House of Commons the Attorney General is not eligible to be a Member of the House of Commons.

At the Parliament holden 1 Caroli Regis, the Sheriff for the County of Buckingham was chosen Knight for the County of Norff. and returned into the Chancery: and having a Subpoena out of the Chancery served upon him at the suit of the Lady C. pendente Parlamento, upon motion, he had the privilege of Parliament allowed unto him by the Judgment of the whole House of Commons.

*Who shall be Electors of Knights, Citizens and Burgesses, how and when: and of Elections.*

Who shall be electors, and who shall be chosen, and the time, place, and manner of Election, and therein the duty of the Sheriff, you may read in the positive Laws of 7 H. 4. cap. 15. 11 H. 4. cap. 1. 1 H. 5. cap. 1. 8 H. 6. cap. 7. 10 H. 6. cap. 2. 23 H. 6. ca. 15. 6 H. 6. ca. 4. &c. which need not here to be particularly rehearsed.

5 Eliz. cap. 1.

No Knight, Citizen or Burgess, can sit in Parliament before he hath taken the Oath of Supremacy.

Vide Rot. Claus. 7 R. 2. 7 Octobris in Dorf. Sir Thomas Moreville elected one of the Knights for the County of Hertford, Ibid. James Berners chosen to serve in Parliament, and both of them discharged. See the Record.

No election can be made of any Knight of the Shire but between 8 and 11 of the clock in the forenoon: but if the election be begun within that time, and cannot be determined within those hours, the election may be made after.

For the election of the Knights, if the party or the Freeholders demand the Poll, the Sheriff cannot deny the scrutiny, for he cannot discern who be Freeholders by the view: and though the party would waive the Poll, yet the Sheriff must proceed in the scrutiny.

If the King doth newly incorporate an ancient Borough (which sent Burgesses to the Parliament) and granteth that certain selected Burgesses shall make election of the Burgesses of Parliament, where all the Burgesses elected before, this Charter taketh not the election of the other Burgesses. And so, if a City, &c. hath power to make Ordinances, they cannot make an Ordinance that a less number shall elect Burgesses, for the Parliament then made the election before;



before; for free elections of Members of the High Court of Parliament are pro bono publico, and not to be compared to other cases of election of Majors, Bailiffs, &c. of Corporations, &c.

If one be duly elected Knight, Citizen, or Burges, and the Sheriff return another, the return must be reformed, and amended by the Sheriff: and he that is duly elected must be inserted: for the election in these cases is the foundation, and not the return.

By original grant or by custom, a selected number of Burgeses may elect and bind the residue.

#### Concerning Charters of Exemption.

The King cannot grant a Charter of Exemption to any man to be freed from election of Knight, Citizen, or Burges of the Parliament (as he may do of some inferior Office or places) because the elections of them ought to be free, and his attendance is for the service of the whole Realm, and for the benefit of the King and his people, and the whole Commonwealth hath an interest therein: and therefore a Charter of exemption that King H. 6. had made to the Citizens of York of exemption in that case, was by Act of Parliament enacted and declared to be void. And though we find some precedents that Lords of Parliament have sued out Charters of exemption from their service in Parliament yet those Charters are holden to be void: for though they be not eligible, as is aforesaid, yet their service in Parliament is for the whole Realm, and for the benefit of the King and his people, of which service he cannot be exempted by any Letters Patents. And if he hath lascivious phantasies, or be extremely sick, or the like, these be good causes of his excuse in not coming, but no cause of exemption, for he may recover his memory and health &c. So as the said precedents were grants de facto, not de jure: for if the King cannot grant a Charter of exemption from being of the grand Assize in a Writ of right, or of a Jury in an Attainder for the mischief that may follow in those private actions; a fortiori, he cannot grant any exemption to a Lord of Parliament; for his service in Parliament is public for the whole Realm. But if any Lord of Parliament be so aged, impotent, or sick, as he can not conveniently without great danger travel to the High Court of Parliament, he may have license of the King under the great Seal to be absent from the same during the continuance or protraction thereof: but if the rehearsal be not true, or if he recover his health, so as he become able to travel, he must attend in Parliament. Or without any such license obtained, if he be so aged, impotent, or sick, as is aforesaid, and yet is amerced for his absence, he may reasonably and honestly excuse himself by the Statute of 5 R. 2.

After the precept of the Sheriff directed to the City or Borough for making of election, there ought secundum legem & consuetudinem Parliam. to be given a convenient time for the day of the election; and sufficient warning given to the Citizens or Burgeses that have voices, that they may be present: otherwise the election is not good, unless such as have voices do take notice of themselves and be present at the election.

Any election or voices given before the precept be read and published, are void, and of no force: for the same electors after the precept read and published may make a new election and alter their voices, secundum legem & consuetudinem Parliamenti.

Thus much have we thought good to set down concerning Knights, Citizens and Burgeses, because much time is spent in Parliament concerning the right of elections, &c. which might more profitably be employed pro bono publico.

Now to treat more in particular (as it hath been much desired) of the Laws, customs, liberties and privileges of this Court of Parliament (which are the very heart-strings of the Commonwealth, whereof we have remembered some: and you may see some few other examples in the margin, too long here to be

2 H. 4. cap. 1. Rot. Parl. 9 H. 4. Indemnity des Seignours & Commons. 1 H. 5. nu. 9. cap. 1. 4 H. 8. cap. 8. vers. finem. & general Law. 6 H. 8. c. 6. in the Preamb.



\* Rot. Parl. 5 H. 4.  
nu. 12.

23 H. 6. nu. 45.

27 H. 6. nu. 18.

31 H. 6. nu. 24, 27.

Lamb. inter leges

Edm. Confessoris, c.

3. Ad Synodos, ad

capitula venienti-

bis, five summoniti

sunt, five per se quid

agendum habuerint,

sit summa pax.

rehearsed) would take up a whole Volume of it self: certain it is, as hath been said, that Curia Parliamenti suis propriis legibus subsistit.

All the Justices of England and Barons of the Exchequer are assistants to the Lords to inform them of the Common Law, and thereunto are called severally by Writ. \* Neither doth it belong to them (as hath been said) to judge of any Law, custom, or privilege of Parliament. And to say the truth, the Laws, customs, liberties and privileges of Parliament are better to be learned out of the Rolls of Parliament, and other Records, and by presidents and continual experience, then can be expressed by any one mans pen.

Per varios actus legem experientia fecit.

Multa multo exercitamenti facilius, quam regulis percipies.

### Consultations in Parliament for maintenance of the Navy.

Rot. Parl. 45 E. 3.  
nu. 32.

The decay of the  
Navy.

In many Parliaments consultations have been had for the maintenance of the Navy of England, and remedies provided against decay of the same: as taking one example for many. In the Parliament holden in An. 45 E. 3. the Commons amongst their petitions do affirm, that the decay of the Navy doth arise by three causes. First, For that sundry mens ships are seized for the King, long before they serve, whereby the owners are driven at their charges to find their Mariners, to their undoing. Secondly, For that Merchants, the nourishers of the Navy, are oft restrained in their shipping, whereby Mariners are driven to seek other trades and livings. Thirdly, For that the Masters of the Kings ships do take up Masters of other ships as good as their selves are, whereby the most of those ships do lie still, and the Mariners enforced to seek new livings: whereof they prayed remedy. To this Petition of Right the Kings royal answer was, That he would provide remedy.

The Kings Navy  
exceeds all others.

The Kings Navy exceeds all others in the world for three things, viz. beauty, strength and safety. For beauty, they are so many Royal Palaces: for strength (no part of the world having such Iron and Timber as England hath) so many moving Castles and Barbicans: And for safety, they are most defensive walls of the Realm. Amongst the ships of other Nations, they are like Lions amongst silly Beasts, or Falcons amongst fearful fowle.

\* Patricius, lib. 5.  
De institutione  
Reipublicæ.

In the Reign of Queen Elizabeth (I being then acquainted with this business) there were 33 besides Pinnaces; which so guarded and regarded the navigation of the Merchants, as they had safe vent for their commodities, and trade and traffick flourished. A worthy subject for Parliaments to take into consideration, and to provide remedy as often as need shall require. For navigation, see Gen. 6. 14. Sapient. 14. 6. \* Remp. quasi navem exstimare debemus, quæ omnium manibus officioque indiget, &c. A leak in a ship is timely to be repaired: For as it is in the natural body of Man, so it is in the politick body of the Commonwealth. Non morbus in plerisque sed morbi neglecta curatio corpus interficit. And thus much for consultations in Parliament concerning the Navy of England.

Of the Burgeses of  
Parliament.  
About 300 Sessions  
of Parliament  
since the Conquest

See the first part of the Institutes, Sect. 164. Verb. [ Veigne les Burgeses al Parliament. ] And there have been since the Conquest about 300 Sessions of Parliament, whereof divers are not printed.

In perusing over the Rolls of Parliament we find, First, Divers Acts of Parliament in print that are not of Record in the Roll of Parliament. Secondly, Many Acts of Parliament that be in the Rolls of Parliament, and never yet printed. Thirdly, Divers Clauses omitted in the print which are in the Parliament Roll. Fourthly, More in the print then in the Record. Fifthly, Many variances between the print and the Roll. Sixthly, Statutes repealed or disaffirmed, and yet printed, &c. Seventhly, Whole Parliaments omitted out of the print. Eighthly, Whole Parliaments repealed, or a great part.

And of every of these taking some examples; for to handle all at large would require a whole Treatise, which (we having broken the Ice, some good man and lover



lover of his Countrey (we hope) will undertake to wade thorow.

As to the first, These are in print and not of Record. \* 20 E. 3. the oath of the Judges. 27 E. 3. c. 4, 5, 6, 7, 8. concerning the Alneger and Galcoign Tunes. 37 E. 3. cap. 7. touching silver vessels. 37 E. 3. cap. 19. of Hawks. 2 R. 2. cap. 5. of Pewes. Vid. 11 R. 2. 11. 2 R. 2. cap. 3. of fained gifts. 7 R. 2. cap. 15. against maintenance 9 R. 2. cap. 3. of error and attain. 11 R. 2. cap. 4, 5, & 6. not of Record. 13 R. 2. cap. 11. touching Clothes. 13 R. 2. cap. 19. concerning Salmons. 13 R. 2. cap. 2. touching Pilgrims. 13 R. 2. cap. 15. concerning the Kings Castles and Gaols. 14 R. 2. cap. 7. concerning Tin. 17 R. 2. cap. 8. of unlawful Assemblies. 17 R. 2. cap. 9. concerning Salmons. 27 H. 6. cap. 3. touching imployments, &c.

To the first.  
\* See the 3. part of the Institutes, De corrupto Judice.

As to the second: These Acts of Parliament are of Record, and not in print. An. 11 E. 3. the creation of the D. of Cornwall, &c. by authority of Parliament. 3 R. 2. nu. 39. concerning Justices of Peace, a profitable Law for them. 8 R. 2. nu. 31. concerning the Jurisdiction of the Constable and Marshal. 20 R. 2. concerning the legitimacion of the children of John of Gaunt, D. of Lanc. by Kath. Swinford. 5 H. 4. nu. 24. a Commission or Act of Parliament for arraying and mustering of men. 8 H. 4. n. 12. Clergy exempted from arraying and mustering of men. 11 H. 4. n. 28. against Bribery and Brocage in great Officers, Judges, 11 H. 4. nu. 63. concerning Attornies, &c. 6 H. 6. nu. 27. that a Queen of England Dowager, shall not contract her self or marry without the Kings license. 9 H. 6. nu. 25. concerning fies of Privy Councelloz, and other head Officers. And very many others.

To the second.  
See the Princes case. lib. 8. fol. 11.

As to the third: In these Acts of Parliament, divers clauses are omitted out of the print, which are in the Parliament Roll. 36 E. 3. cap. 3. in the Act of Purveyors, &c. in the clause of the penalty, the Steward, Treasurer, and Comptroller are expressly named, but omitted in the print. 2 R. 2. Stat. 2. cap. 4. in confirmation of liberties, &c. saving the Kings regality is omitted. 13 R. 2. cap. 1. concerning presentation of the Bing, the last clause, concerning ratifications of the King, is omitted. 13 R. 2. cap. 2. touching provisions. 14 R. 2. cap. 4. nu. 9. concerning Regrators of wools, high prices omitted in the print. 17 R. 2. cap. 4. of Wals, leaveth out Herfordshire. 2 H. 5. cap. 3. nu. 38. concerning enquests. 2 H. 5. c. 1. n. 30. concerning Justices of peace. 9 H. 4. cap. 8. nu. 43. concerning provisions. 8 H. 6. nu. 50. cap. 10. concerning process during the Kings will, omitted in the print.

To the third:

As to the fourth: In these there is more in the print then in the Record. 9 H. 4. ca. 8. nu. 43. touching provisions. 2 H. 5. Stat. 2. cap. 3. nu. 38. touching Ju-  
rors, &c.

To the fourth.

The fifth: In these the print vary from the Record in some material thing. Generally in all the Statutes made concerning provisions, or other the usurpations of the Pope, the biting and bitter words are left out in the print. As to take an example or two. V. 38 E. 3. in print. cap. 1, 2, 3, 4. and in the Roll, nu. 9, &c. 3 R. 2. cap. 3. in print. Rol. nu. 37. &c. the Bishops being Lord Chancellors. 9 R. 2. n. 1. the print mistakes the beginning of the Parliament, viz. the Monday after S. Luke, for Friday. 9 H. 4. cap. 2. nu. 26. concerning Attornies, &c. A Roll of Parliament intituled 14 E. 4. where it should be 13 E. 4. 9 H. 5. cap. 2. & 3. printed as perpetual in some Books, where they were to endure but until the next Parliament.

To the fifth.

The sixth: Statutes pretended to be enacted, and after disaffirmed, and yet printed. 5 R. 2. cap. 5. Stat. 2. touching inquiries of Heresies. An. 6 R. 2. nu. 52. disaffirmed by the Commons, for that they protested it was never their meaning to be justified, and to bind themselves and their successors to the Prelates, no more then their ancestors had done before them. Robert Braibroke Bishop of London was then Lord Chancellor. By this and that which follows, it appeareth how necessary it was in those days to have some of the Commons to be (as hath been said) at the ingrossing of the Parliament Rolls, as appeareth Rot. Parl. Anno 6 H. 4. nu. 56. 7 H. 4. nu. 65. &c. & Modo tenend' Parl cap. 8. 2 H. 4. cap.

To the sixth.



Rot. Parl. 11 H. 4.  
nu. 12. vide  
7 H. 4. nu. 11.

To the seventh.

cap. 15. disavowed by the Commons, and yet the pretended Act printed 2 H. 5. ca. 6. against Preachers, disavowed the next Parliament by the Commons, for that they never assented, and yet the supposed Act printed.

The seventh: Whole Parliaments omitted out of the print, wherein there be many notable things to be observed. An. 3 E. 2. a Parliament holden at Westm. 3 Sept. Dorf. Claus. 2 E. 2. m. 14. & 22. An. 4 E. 2. apud London. 5 E. 2. apud West. 6 E. 2. ib. bis. 7 E. 2. ib. 8 E. 2. apud Eborum. 11 E. 2. apud Westm. 16 E. 2. apud Rippon, & postea apud Eborum. An. 6 E. 3. a Parliament holden at Westminster the Monday after the Feast of S. Gregory. An. 8 E. 3. a Parliament holden at York the day before the Feast of S. Peter in Cathedra. An. 11 E. 3. at Westm. whereat the Prince was created Duke of Cornwall, &c. Anno 13 E. 3. holden at Westm. in 15 Mich. 22 E. 3. at Westm. the Monday next after the week in the midst of Lent. 29 E. 3. a Parliament holden at Westm. the day after S. Martin. 40 E. 3. at West. the Monday after the invention of the Cross. 7 R. 2. at Westm. the Friday after the Feast of S. Mark, &c.

To the eighth.

The eighth: Whole Parliaments repealed and made void by subsequent Parliaments. 1 H. 4. c. 3. repealed. 21 R. 2. which had repealed the Parliament of 11 R. 2. and reviveth the same. By 39 H. 6. c. 1. a Parliament holden at Coventry An. 38 H. 6. is wholly repealed. Rot. Parl. 12 E. 4. nu. A whole Parliament holden An. 49 H. 6. & readeptionis Regni sui primo, is repealed and reversed.

*a* Where the printed book suppose that there was another Parliament in Anno 15 E. 3. whereby the former Statute was repealed, the truth is, the Parliament was holden at Westm. 15 Pasch. An. 17 E. 3.

*b* Histories sometime explain Records of Parliament.

*c* Rot. Parl. 10 H. 6. nu. 14.

*a* Vide the Parliament of 15 E. 3. repealed. Rot. Parl. Anno 17 E. 3. nu. 23. For there it is agreed that the Statute of 15 E. 3. shall be utterly repealed, and lose the name of a Statute, as contrary to the Laws and prerogative: and for that some Articles there made are reasonable, it is agreed, that such Articles and others agreed in this Parliament shall be made into a Statute by the advice of the Justices.

*b* Many Records of Parliament can hardly be understood, unless you join thereunto the History of that time. For example: *c* The Cardinal of Winchester, Uncle to the King, declareth in open Parliament, that he being in Flanders, in his journey to Rome, returned back of his own will to purge himself of a bruit, that he should be a Traitor to the Realm, whereof (no accusation being against him) he was easily purged by the Duke of Glouc. Protector, by the Kings commandment. But add the History thereunto, that the Cardinal having certain of the Kings Jewels in gage, meant to have them brought after him: but these Jewels being arrested and stay'd at Sandwich by the Kings commandment, and the bruit hereof coming to the Cardinals ear (he being therewith exceedingly troubled) for the recovery of them, returned in post to the Parliament. Now after he was purged of the bruit of supposed Treason; touching the said Jewels stay'd at Sandwich to the great hindrance of the Cardinal, as he complained; It was on a motion on his behalf, ordered that the Cardinal should pay to the King Six thousand pound more for them, and lend to the King thirteen thousand pound, which was done.

This appeareth in the same Parliament, nu. 15.

And for a conclusion hereof, and of this Chapter of the High Court of Parliament, it is to be remembred, that by the Statute of 42 E. 3. c. 1. all Statutes are repealed that are against Magna Carta, or Carta de Foresta.

Parliaments in Scotland.  
In Ireland.

See hereafter cap. 75. how and in what manner Parliaments be holden in Scotland. And cap. 77. how and in what manner Parliaments be holden in Ireland, and how Bills shall pass there, never before this time published, as we know.

## CAP. II.

*Of the Councel Board, or Table.*

**T**his is a most noble, honourable, and reverend Assembly of the King and his Privy Councel in the Kings Court or Palace : *a* With this Councel the King himself doth sit at his pleasure. These Counsellors, like good Sentinels and Watchmen, consult of, and for the *b* publick good, and the honour, defence, safety, and profit of the Realm. A consulendo, secundum excellentiam, it is called the Councel Table. *c* Private causes, lest they should hinder the publick, they leave to the Justices of the Kings Courts of Justice, and meddle not with them : they are called Concilium regis privatum, concilium secretum, & continuum concilium regis. *d* The number of them is at the Kings will, but of ancient time there were twelve, or thereabouts. Of the diversity of the Kings several Councels, you may read in the First part of the Institutes, Sect. 164.

See Rot Pat. 42 E.3. parte 1. m.13. de concilio Regis.

11 H.4. nu.14. 23.47. d Rot. Par. 50 E.3. nu.10. 12. 1 R.2 nu.4. Rot.Pat. 1. parte, m.10. Rot. Parl. 7 H.4 31.41. 66.67. 1. part of the Institutes, Sect. 194. Rot.Claus. 16 E.2. m 5. in Dors. Hen. de bello monte baro de magno & de secreto concilio regis jurat.

King E.3. would have his Counsellors to have four properties. 1. That he be parcus sui, knowing that he would never be provident for him, that would not be a good husband for himself. 2. That he should not be cupidus rei alienæ, no covetous, nor greedy man, for ei nihil turpe, cui nihil satis. 3. That he should be avarus reipublicæ, covetous for the Kings Treasure and Commonwealth : and 4. That he super omnia sit expertus ; in what place the King shall employ him, that he be expert ; for great offices, are never well managed by Deputy, where the Officer himself is but a Cipher.

To these Counsellors all due Honour and Reverence is to be given, for they are incorporated to the King himself, and bear part of his cares, they are his true Treasurers, and the profitable Instruments of the State. Such Honour was given to Counsellors of State in ancient time, *e* that if one did strike in a Senators or Counsellors House, or elsewhere in his presence, he was fined.

*f* See Vet.Mag. Cart. fo.51.2. parte. Hugh Spencer the Father, Lord Spencer Earl of Winchester, and the Kings Chamberlain, and Hugh his Son Earl of Gloc' were adjudged in Parliament to be exiled, &c. amongst other Articles, six were. First, for that they by their evil covin would not suffer the Grandes of the Realm, nor the Kings good Counsellors to speak with or come near the King, or to give him good Counsel, or that the King might speak with them, but only in the presence or hearing of the said Hugh the Father, and Hugh the Son, or of one of them, and at their will, and according to such things as pleased them. Secondly, for giving evil counsel to the King, not to answer the petitions of the great men and others, but at their pleasure. Thirdly, that they, to attain by their malice and covetousness to the disservice of the great men of the Realm, and destruction of the people, put out good and covenable Ministers, which had their places by assent, and put in others false and evil of their covin, that they should not cause right to be done. And Sheriffs, Clicheators, Constables of Castles, and others in the Offices of the King, not covenable for the King, nor for the people they did make, and caused Justices to be made not Conusants in the Laws of the Land, to hear and determine things touching the great men and people of the Realm, &c. And so, that which ought to be for the maintenance of the

*a* Rot. Claus. 12 E.3. parte 2. m.19 3. E.3. fo.14. Rot.Par. 1 R.2. part m 16.8 H.4. nu.76.&c. Rot. Par. 2 H.6. nu.15. *b* Pro bono publico.

*c* 20 E.3. ca.1. 25 E.3. cap. 1. Stat.4 42 E.2. ca.3. Rot.Par. 1 R.2. nu.87. 112. Rot. Par. 7 H.4. nu.41. Parl. 7 H.4 31.41.

*d* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*e* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*f* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*g* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*h* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*i* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*j* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*k* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*l* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*m* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*n* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*o* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*p* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*q* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*r* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*s* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*t* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*u* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*v* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*w* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*x* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*y* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

*z* See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.



Magna Carta.

peace, and of good men, and punishment of evil, was turned to the disheritance of the great men, and destruction of the people. Fourthly, that they falsly and maliciously did counsel the King to raise Horse and Arms, &c. in destruction of the good people, against the form of Magna Carta, and so by their evil counsel would have moved War within the Realm, to the destruction of Holy Church, and of the people, for their proper quarrel. Fifthly, for defeating by their evil Counsel that which the King had granted in his Parliament by his good Counsel, by the assent of the Peers of the Land, to the dishonour of the King, and against right and reason. Sixthly, they would not suffer the King to take reasonable fines, &c. upon Alienations, &c. Read the whole.

Whereby it appeareth that one or two ought not to be sole Counsellors, and to make a Monopoly thereof, for true it is that Homer saith,

Homer.

See the Articles  
against Cardinal  
Woolsey, hereafter  
cap. Chancery, pa.  
Art. 9, 10, 15

\* Utilis sed non  
solus.

a Ro. Par. 11 H. 4.  
nu. 14. Nota.

Vid. Ver. Mag.

Cart. parte 1.

fo. 165. juramen-

tum consiliariorum.

Vide Fleta lib. 1.

ca. 17.

Nota, vide inf. 5.

Haud quaquam poteris tu fortiter omnia solus,  
Namque aliis divi bello pollere dederunt,  
Huic saltandi artem, voce huic, citharaque canendi.  
Inseruitque sagax alii sub pectore magnus  
Jupiter ingenium, at multis est \* utilis ille.

a The duty of a Privy Counsellor appeareth by his Oath, which consisteth on these Articles or parts.

1. That he shall as far forth as cunning and discretion suffereth, truly, justly and evenly counsel and advise the King in all matters to be commoned, treated, and demeaned in the King's Counsel, or by him as the King's Counsellor.

2. Generally in all things that may be to the King's honour and behoof, and to the good of his Realm, Lordships and Subjects, without particularity or exception of persons, not leaving, or eschewing so to do for affection, love, mæd, doubt, or dread of any person or persons.

3. That he shall keep secret the King's Counsel, and all that shall be commoned by way of counsel in the same, without that he shall common it, publish it, or discover it by word, writing, or in any otherwise to any person out of the same Counsel, or to any of the same Counsel, if it touch him, or if he be party thereof.

Rot. Par. 11 H. 4.  
nu. 28.

4. That he shall not for gift, mæd, nor good, ne promise of good by him, nor by mean of any other person receive or admit for any promotion, favouring, nor for declaring, letting, or hindring of any matter or thing to be treated or done in the said Counsel.

Nota, supra, 2.

5. That he shall with all his might and power help and strengthen the King's said Counsel in all that shall be thought to the same Counsel for the universal good of the King and his Land, and for the peace, rest and tranquillity of the same.

6. That he shall withstand any person or persons of what condition, estate or degree they be of, that would by way of feat, attempt, or intend the contrary.

7. And generally that he shall observe, keep and do all that a good and true Counsellor ought to do unto his Sovereign Lord.

By force of this Oath and the Custom of the Realm he is a Privy Counsellor without any Patent or Grant, during the life of the King that maketh choice of him.

Rot. Par. 9 H. 6.  
nu. 25.

It is enacted that all the King's Counsellors, and other head Officers there named shall have yearly out of the Exchequer such fees by way of reward as are there expressed.

Every Privy Counsellor hath a voice and place in the Court of Star-chamber, as in the Chapter of the Court of Star-chamber appeareth.

For the better performance of which Oath, King H. 8. would wish that his Counsellors would commit Simulation, Dissimulation and Partiality to the Docters lodge when they came to sit in Counsel.



## Of the President of the Councel.

There is, and of ancient time hath been a President of the Councel, who was sometime called *Principalis consiliarius*, and sometime *Capitalis consiliarius*, Rot.Par. 9 E.2. Comes Lancast' 50 E.3. 1 R.2. 1 pars. Pat. nu.22. 1 H.6. nu.26, 27. Dux Bedf. Rot. Pat. 1 H.6. parte 3. Dux Gloc' Rot. Parl. 10 H.6. nu.9. Dux Gloc'. *Sæ* Rot. Parl. 11 H.6. nu.19. Rot. Parl. 22 H.6. Dux Eborum. Rot. Pat. 13 E.4. part 1. Johannes Ruffel Episcopus Roffen & postea Lincoln Præsidens concilii. Int Record' Curie itellat Johannes Filher Episcopus Roff. Præsidens concilii 12 H.7.A. 25 H.8. usq; 37 H.8. Carolus Brandon Dux Suff. in libro pacis, Rot. Parl. 1 E.6. Pawlet. In the Journal book of Parliament. 5 E.6. & 7 E.6. Dux Northumb. 1 & 2 Ph. & Mar. comes Arundel, &c.

Acts of Parliament naming the Presidents of the Councel, 21 H.8. cap. 20. 31 H.8. ca.10. 34 H.8. ca.1.

This Office was never granted but by Letters Patents under the Great Seal durante beneplacito, and is very ancient: for John Bishop of Norwich was President of the Councel In Anno 7 Regis Johannis, Holl. fo. 169. Math. Paris 205. & Math. Westm Dormivit tamen hoc officium regnante magna Elizabetha.

The Lord President is said in the Statute of 21 H.8. ca.20. to be attending upon the Kings most Royal Person, and the reason of his attendance is, for that of later times he hath used to report to the King the passages, and the state of the business at the Councel Table. *Sæ* 50 E.3. ubi supra.

Pert to the President of the Councel, (as more fully appeareth in the Chapter of Precedency) sitteth in Councel, &c. the Lord Privy Seal, who besides his Oath of a Privy Counsellor taketh a particular Oath of the Privy Seal, which consisteth on four parts: 1. That he, as far forth as his cunning and discretion suffereth, truly, justly, and evenly execute, and exercise the office of the Keeper of the Kings Privy Seal to him by his Highness committed. 2. Not leaving or eschewing so to do for affection, love, meed, doubt, or dread of any person or persons. 3. That he shall take special regard, that the said Privy Seal in all places where he shall divert unto, may be in such substantial wise used and safe kept, that no person without the Kings special commandment or his assent, or knowledge, shall move, seal, or imprint any thing with the same. 4. Generally, he shall observe, fulfil, and do all and every thing which to the Office of the Keeper of the Kings Privy Seal duly belon geth and appertaineth.

This is an Office of great trust and skill, that he put this Seal to no grant without good warrant, nor with warrant, if it be against Law, undue, or inconvenient, but that first he acquaint the King therewith.

Upon the Lord Privy Seal are attendant four Clerks of the Privy Seal: Now how, and in what wise the the Kings Grants, Writings and Leases shall pass the three Seals, viz. the Privy Signet, the Privy Seal, and the Great Seal, and the duties of the Clerks of the Privy Signet, and Privy Seal, and what fees shall be paid, and where none at all, &c. and many Articles concerning the passing of the Kings grants, &c. you may read in the Statute of 27 H.8. a Law worthy of observation. And of this Act you may read Lib.8. fo.18.b. in the Princess case. This Officer is named in the Statutes of 2 R.2. ca.5. and 12 R.2. ca.11. \* Clerk of the Privy Seal. In Rot. Parl. 11 H.4. nu.28. Garden del Privy Seal: and in the Statute of 34 H.8. ca.4. Lord Privy Seal. This Seal is called by several names. By the Statute of 11 R.2. ca.10. it is provided that Letters of the Signet, nor of the Kings secret Seal shall be from henceforth sent in damage or prejudice of the Realm, nor in disturbance of the Law. Vide Mir ca.3. §. Exception al power de Judge.

In the Statute of Articuli super Cartas, cap.6. 28 E.1. it is called the little Seal, and likewise in the Statute of 2 E.3. cap.8. it is so called. Register. fo.186. Parvum Sigillum. 50 E.3. nu.185. F. N. B. 180. Fleta lib. 2. cap.12. §. Est int. &c. Custos privati Sigilli, Clerks of the Signet, Clerici Signetti are named

*Principalis consiliarius.*  
*Capitalis consiliarius.*  
You shall have what we have observed by our own reading, of others learn that which is here wanting.

21 H.8. ca.20.  
Vid. Rot. Parl.  
50 E.3. nu.12.  
The Lord Privy Seal.

See Rot. Parl.  
50 E.3. nu.10. &c  
nota bene.  
The Oath of the Lo. Privy Seal.

27 H.8. ca.11.

27 H.8. ca.11.

\* An humble name of a great Officer, and in those Acts ranked amongst the Grantees of the Kingdom.

See the 2 part of the Instit. Artic. super Cart. ca.6.



F.N.B. 85. 2.  
See Artic. super  
Cartas, ubi supra.  
Lib.8. ubi supra.

9 R.2. nu.12. and  
11 H.4. nu.28.  
not in Print.  
3 E.6.ca.5. repea-  
led.

in the said Act of 27 H.8. &c. and are four in number attendant upon the Kings principal Secretary, who always hath the keeping of this Seal or Signet, for sealing of the Kings Privy Letters: these four Clerks sit at the Secretaries Board. He that desireth to read more of the duty of Privy Counsellors, and how, and for what causes they are to be punished, if they offend; let him read the Parliament Roll of the 50 year of E.3. nu. 15,16,17,18,19,20,21,22,23, 24,25,26,27,28,29,&c. 34,35,&c.

Acts of Parliament concerning the Kings Privy Counsel, 25 E. 3. cap. 4. Stat.4. 28 E 3. cap. 31. 42 E.3. cap.3. in print. 9 R.2. nu.12. 11 H.4. nu.28. 13 H.4. c.7. 3 H.7. c.14. 3 E.6. c.5. 21 Jac. c.3. concerning Warrants of Assistance, &c. 3 Caroli ca. 1. in the Petition of right, concerning Loans, &c. Imprisonment, &c. Partial Law, Soldiers, &c.

See hereafter pa. in the Chapter of the Chancery in the Articles against Cardinal Woolsey Artic. 9,10,15. &c. concerning Privy Counsellors.

It appeareth by the Writs and Records of Parliament, that the High Court of Parliament is resolved to be holden by the King per advisamentum consilii sui, that is, by advice of his Privy Counsel.

Orders of Parliament for the Privy Counsel, and other things concerning them in the Rolls of Parliament. 50 E.3. nu. 10,12,15,21,34. 42 E. 3. nu. 27. Sir John Lees case. 1 R.2. nu.87.112. Rot.Pat. 1 R.2. part 1. m.16. 2 R.2. Stat. 1. nu.49. Rot.Parl. 1 H.4. nu.2. 7 H.4. nu.31,32,33. 41.66,67,68,&c. 11 H.4. nu.14. 13 H.4 nu.3. 1 H.6. nu.30,31,32. 2 H.6. nu. 15,16,17. 8 H.6. nu. 27,28. certain Articles to the number of eighteen touching the order of the Kings Council (amongst which the eleventh is, that all Offices and Benefices of the Kings gift, such as had served him or his Father, should be preferred thereunto) are established by the King, the Bishops and Lords. 9 H.6. nu.25. 11 H.6. nu.19. Six Articles, whereof the last was, that a Roll should be made of such as at any time had served in the Wars, or otherwise, to the end they should be preferred to Offices and Benefits. 12 H.6. nu.4. De intendentiis consiliariorum. 31 H.6. nu.30. Vide Rot.Pat. 32 H.6. part 1. m.22.

Acts of Council concerning the same. Rot. finium. 20 E.3. m.8. Rot. Claus. 4 H.4. in Dorf. m. 13. Claus. 25 E.3. m.10. Pat. 19 R.2. part 2. m. 8. Claus. 20 E.3. part 1. m.26. The Clerks of the Council are attendants upon the Lords and others of the Privy Counsel, Concerning the Clerks of the Council and their duty, see Rot.Parl. Anno 1 H.6. nu.32. 2 H.6. nu.17. &c.

Of these Acts of Parliament, Orders in Parliament, and Acts of Council we have referred you (for avoiding of tediousness) to the originals. Qui ambulat fraudulententer revelat arcana, qui autem fidelis est celat, &c.

Prov. 11. 13.

Tobit 12. 7.

Valerius lib. 4.  
Regulæ.

Ovid.

*Eximia est virtus præstare silentia rebus;  
Ac contra gravior culpa tacenda loqui.*

Vegetius lib. 3.  
de re militari.

Nulla sunt meliora consilia, quam quæ ignoraverit adversarius antequam facias, &c. Quid fieri debeat, tractato cum multis; quid facturus sis, cum paucissimis ac fidelissimis, &c. Consilia nisi sint abscondita, exitum raro prospiciunt.

Erasmus in Epist.  
\* Curtius.

Consilia callida & audacia prima fronte læta, tractatu dura, eventu tristia. In consiliario imprimis requiritur temperantia, quia\* novandis, quam gerendis rebus aptiora ingenia illa ignea. And it is certain that men of fiery and furious spirits easily become factious.

Plinie.

In consiliario Principis tria maxime requiruntur, libertas, fides, & veritas: libertas consilii est ejus vita & essentia, qua erepta, consilium evanescit.

Tacitus.

Privatæ res semper offecere, officientque publicis consiliis, pessimum veri affectus & judicii venenum sua cuique utilitas.

Tu civem patremque geris, tu consule cunctis;  
Non tibi, nec tua te moveant, sed publica vota.

All which, and much more are comprehended within the oath abovesaid.

Some rules of Counsel, which in Council we have observed, we will add. First, That it is safest to give a King counsel, when he demandeth it. Secondly, The truest and best counsel is ever given to a King, when the question is so evenly propounded, as the Counsellor knoweth not which way the King himself inclineth. Thirdly, That <sup>a</sup> *præpropera consilia sunt raro prospera*: for resolution should never go before deliberation, nor execution before resolution. Fourthly, When upon debate and deliberation it is by the Counsel Table well resolved, the <sup>a</sup> change thereof upon some private information is neither safe nor honorable, <sup>b</sup> nor that after resolution timely execution be delayed. Fifthly, It is a mean of prosperous success when the question is debated with a few, not that he should reply upon them, but that thereby the state of the question may be well understood, to the end the same may be plenarily, and fully propounded to the whole board. Sixthly, <sup>c</sup> Good counsel is the soul of the State. Seventhly, When Counsellors do hide or disguise the truth, it is full of danger, both to the King and to themselves. Eighthly, Violent courses are like to hot waters that may do good in an extremity, but the use of them doth spoil the stomach, and it will require them stronger and stronger, and by little and little they will lessen their own operation. Lastly, Such fear as doth not fall, in constantem virum, is an enemy to good counsel: for what is fear, <sup>e</sup> but a betraying of such succors, as reason (and counsel) should afford?

No Lord of Parliament takes any place of precedency in respect he is a Privy Counsellor. But under that degree such place a Privy Counsellor shall take, as is set down in serie ordinum tempore H. 7. here after remembered in the Chapter of Precedency.

\* Book of Judg. 19. ver. ultimo. Consider, consult, and then give sentence.

<sup>a</sup> Seneca. Non semper in uno gradu, sed in una via, non semitat, sed aptat.

<sup>b</sup> Salust. Præquam incipias, consulto, & ubi consulueris mature facto opus est.

<sup>c</sup> 11 H. 4. nu. 14.

<sup>d</sup> Malum consilium consultori pessimum. Rot. Claus. 18 H. 3. nu. 19. Segraves case.

Rot. Par. 50 E. 3. nu. 24. Seignior Latimers case.

<sup>e</sup> Sap. 12.



## CAP. III.

*Of the Power and Authority of the Protector and Defender of the Realm and Church of England during the Kings tender age.*

SCC Rot. Parl. an. 1 H. 6. nu. 26. & 27. 2 H. 6. nu. 16. 6 H. 6. nu. 22, 23, 24. 8 H. 6. nu. 13. 11 H. 6. nu. 19. 32 H. 6. nu. 71. where you shall find his authority, place, and precedency, well expressed and described.

The surest way is to have him made by authority of the Great Council in Parliament.

See Hollingsheds Chronicle, pa. 1069. which may give you occasion to search for the Records of such Protectors as are there rehearsed.

## CAP. IV.

*The Court of the High Steward of England, intituled, Placita Coronæ coram Thom. Duce N. Seneschallo Angliæ.*

¶ His stile.

¶ The antiquity of his Office.

Nota, Then a Judge of the Peers of the Realm.

1 H. 4. 1. 13 H. 3. 13

Cust. de Norm.

cap. 10.

**H**is stile is Seneschallus Angliæ. This office is very ancient, and was before the Conquest. For I read in an ancient and authentical Manuscript, intituled, *Authoritas Seneschalli Angliæ*: where putting an example of his authority, saith: *Sicut accidit Godwino comiti Kancie tempore Regis Edwardi antecessoris Willielmi Ducis Normandiæ pro hujusmodi male gestis & consiliis suis (per Seneschallum Angliæ) adjudicatus & forisfecit Comitivam suam.*

In the time of the Conqueror William Fitz-Eustace was Steward of England. And in the Reign of Will. Rufus and H. 1. Hugh Grantsfemenel Baron of Hinkley held that Barony by the said Office.

Of ancient time this Office was of inheritance, and appertained to the Earl of Leicester, as it also appeareth by the said Record: *Seneschalcia Angliæ pertinet ad Comitivam de Leicester, & pertinuit ab antiquo.* That is, that the Earl of Leicester, was holden by doing of the office of Steward of England. Other Records testified that it should belong to the Barony of Hinkley. The truth is, that Hinkley was parcel of the possessions of the Earl of Leicester, for Robert Bellomont Earl of Leicester in the Reign of H. 2. married with Petronil daughter and heir of the said Hugh Grantsfemenel Baron of Hinkley, and Lord Steward of England, and in her right was Steward of England. And so it continued until by the forfeiture of Simon Montford it came to King H. 3. who in the 50 year of his Reign, created Edmond his second son Earl of Leicester, Baron of Hinkley, and High Steward of England, which continued in his Line until Henry of Bullinbrooke \* son and heir of John of Gaunt Duke of Lancaster and Earl of Leicester, who was the last that had any estate of inheritance in the Office of the Steward of England. Since which time it was never granted to any Subject, but only hac vice. And the reason was, for that the power

\* Rot. Parl. 21 R. 2. nu. 4. Int. placita coronæ John of Gaunt Duke of Lanc. and Earl of Leicester, Steward of England.

power of the Steward of England was so transcendent, that it was not holden fit to be in any subjects hands; for the said Record saith, *b* Et sciendum est quod ejus officium est supervidere, & regulare sub Rege, & immediate post Regem totum Regnum Angliæ, & omnes ministros legum infra idem Regnum temporibus pacis & guerrarum, &c. and proceedeth particularly with divers exceeding high Powers and Authorities, which may well be omitted, because they serve for no present use.

*c* And albeit their power and authority have been since the Reign of H. 4. but hac vice, yet is that hac vice limited and appointed. As when a Lord of Parliament is *d* indicted of treason or felony, then the grant of this Office under the Great Seal is to a Lord of Parliament, reciting the Indictment, *e* Nos confidentes quod justitia est virtus excellens & Altissimo complacens, eaq; præ omnibus uti volentes, ac pro eo quod officium Seneschalli Angliæ, cujus præsentia pro administratione justitiæ & executione ejusdem in hac parte facien' requiritur, ut acciperetur, jam vacat: De fidelitate, strenuitate, provida circumspectione, & industria vestris plurimum confidentes ordinavimus & constituimus vos *ex hac causa & causis* Seneschallum nostrum Angliæ ad officium illud cum omnibus eidem officio in hac parte debitis & pertinentibus hac vice gerend', accipiend', & exercend', *f* dantes & concedentes vobis tenore præsentium plenam & sufficientem potestatem & auctoritatem, ac mandatum speciale indictamentum prædict. &c. So as it appeareth, that this great Officer is wholly restrained to proceed only upon the recited indictment. And he to whom this Office is granted, must be a Lord of Parliament, and his proceeding is to be *g* secundum leges & consuetudines Angliæ, for so is his Commission. And hereof you may read more at large in the third part of the Institutes, cap. High Treason. *b* Also at every Coronation he hath a Commission under the Great Seal hac vice, to hear and determine the claims for grand Serjeants and other honorable services to be done at the Coronation for the solemnization thereof: for which purpose the High Steward doth hold his Court some convenient time before the Coronation. See a president hereof before the Coronation of King R. 2. John Duke of Lancaster then Steward of England, (who in claims before him was styled Treshonorable Seignior Roy de Castle & Leon, & Seneschal Danglerterre) and held his Court in Alba Aula apud Westm. die Jovis proxime ante Coronationem. Quæ quidem Coronatio habita & solemnizata fuit die Jovis sequente, viz. 16 Julii Anno 1 R. 2.

The first that was created hac vice for the solemnization of the Coronation of H. 4. was Thomas his second son. *i* And upon the arraignment of John Holland Earl of Huntingdon, the first that was created Steward of England hac vice, was Edward Earl of Devon.

Rot. Parl. 37 H. 6. nu. 49. Thomas Courtney Earl of Devon was arraigned of High Treason before Humphrey Duke of Gloc. hac vice Steward of England, and acquitted; and so was the Lord Dacres of the North arraigned of High Treason before Thomas Duke of Norff. hac vice Steward of England, and acquitted by 20 Peers.

When he sitteth by force of his Office he sitteth under a Cloth of Estate and such as direct their speech unto him, say, Pleace your Grace my Lord High Steward of England. The stile of the said John of Gaunt was Johannes filius Regis Angliæ, Rex Legionis & Castellæ, Dux Aquitaniæ & Lancastriæ, Comes Derbiæ, Lincolnæ, & Leicestriæ, Seneschallus Angliæ. And in respect his power before it was limited was so transcendent, I find no mention made of this great Officer in any of our ancient Authors, the Mirror, Bracton, Britton, or Fleta. It seemeth they liked not to treat of his authority. Neither do I find him in any Act of Parliament, nor in any Book case before 1 H. 4. and very few since: which hath caused me to be the longer in another place to set forth his authority and due proceeding upon the arraignment of a Peer of the Parliament, by judicial record and resolution of the Judges, agreeable with constant experience.

For the Etymology and signification of [Seneschallus] see the first part of the Institutes:

His authority *hac vice*: and therefore he is not mentioned in the Statute of 31 H. 8. cap. 1. concerning the placing of great Officers.

*b* Herewith agreeeth the Custom of Norm. cap. 10. fol. 17. Hollensh. Chron. p. 866.

*c* His authority (*hac vice*) limited.

*d* See the 2. part of the Institutes Mag. Cart. cap. 29. 1 H. 4. cap. 1.

*e* He is sole Judge by the Common Law and can make no Deputy.

*f* Stanf. pl. cor. 152 1 H. 4. fol. 1.

13 H. 8. fol. 11. b.

*g* His rule.

*b* His further authority.

*i* V. 1 H. 4. fol. 1. Therefore Thomas Walsingham p. 363. and others who affirm that he was beheaded at Plesie in Essex by the Commons, do err. 4 Term Pasch. 26. H. 8. of Justice Spilmans Report.

See the third part of the Institutes, cap. Treason.



The first part of  
the Instit. Sect. 78.

Institutes: And though it hath several derivations, yet as being applied to England, it is properly derived from Sen, that is, Justice, and Schale, that is, Governor or Officer, that is, Præfectus seu officarius justitiæ. And this agreeth well with his authority and duty to proceed (as hath been said, secundum leges & consuetudines Angliæ.

It is to be observed, that as the Peers of the Realm that be Trisors or Peers, are not sworn, so the Lord Steward being Judge, &c. is not sworn; yet ought he according to his Letters Patents to proceed secundum legem & consuetudinem Angliæ.

## C A P. V.

### *The Honorable Court of Star-Chamber, Coram Rege & Concilio suo: Of ancient time, Coram Rege in Camera, &c.*

¶ That it is an  
eminent Court  
proved by Re-  
cords, and Acts  
of Parliament.

a 22 Lib. Ass. pl. 52  
b Rot. pat. 1. part  
m. 13.

¶ Fraud and  
falsehood.

c Rot. pat. 1 part  
m. 13.

¶ Falshood in an  
Officer and ris-  
ing of a Record.

d Rot. claus. 42 E.  
3 m. 8. in dorf.  
Vid. Rot. pat.  
2 R. 2. 1 part m.  
Camera Stellata, for  
raising.

12 R. 2. c. 11. de  
le council.

e Rot. claus. 41 E. 3  
Camd. Brit 130.

f Rot. claus. 16 R. 2.  
in dorf. m. 11.

g Pat. 6 H. 5. &  
confinile Anno 7  
H. 5. pro manerio  
de Fisherwicke in  
Com. Norff.

h Rot. claus. 17 H. 6

¶ In the 28 year of the Reign of E. 3. it appeareth, that the returns Coram nobis are in three manners. Coram nobis in Camera (which it is said, was afterwards called Camera Stellata.) 2. Coram nobis ubicunque fuerimus in Anglia. which is the Kings Bench: and Coram nobis in Cancellaria. And of all the High and Honorable Courts of Justice, this ought to be kept within his proper bounds and jurisdiction.

b In 38 E. 3. Coram Rege & Concilio, John Redland complained of Robert Spinke for delivery of prisoners upon false suggestion made to the King: upon hearing the cause, the defendant was acquitted, the plaintiff imprisoned.

c In 39 E. 3. Ralph Brantingham one of the Chamberlains of the Exchequer complained before the King and his Council of Richard Cetterfeild Clerk Deputy of the Kings Treasurer, in the receipt, for divers allowances, payments, &c. unduly made, and for raising of Records, &c. Upon the hearing of the cause by the whole Council, the defendant was acquitted, and the plaintiff removed from his office, and committed to prison.

d The Abbot de Bruera, Ragge his Monk sentenced Coram Rege & Concilio, for raising of Letters Patents, and inserting other words: and the Letters Patents by sentence cancelled.

e In Anno 41 E. 3. in a Will of complaint exhibited to the King by Elizabeth the widow of Nicholas Awdeley plaintiff, against Jane Awdeley defendant, who appeared before the Kings Council, viz. the Chancelloz, Treasurer, Justices, and others assembled En la Chamber des Estoils pres de la Reecits.

f A suit depending before the King and Council between the Abbot of Saint Austen of Canterbury and others concerning Wrecks, &c. The Abbot brought his action at the Common Law against the parties, who being thereupon arrested and imprisoned, the Sheriff was commanded by the Kings Writ to deliver them, and to forbear to serve any other Proses against them, and the reason there yielded is notable, Quia non est juri consonum, aut honestum, quod aliquis de hiisque coram nobis & concilio nostro in discussione pendent, alibi inde interim placitari debeat, aut apparere.

g A suit depending before the King and his Council, between W. G. of the one part, and H. S. of the other part: a Sequestration is ordered for the prefer-  
vation of the things in question.

h In 17 H. 6. an enrolment of a confession of John Ford of Lon. Perce before the Lord Treasurer and others of the Kings Council in the Star-Chamber for the



the fraudulent packing and transporting of Wool, with a Writ to the Sheriff of London to set him on the Pillory.

The Abbot of Westminster exhibited his Bill to the King against the Sheriffs of London for arresting and drawing out with force a privileged person out of the Sanctuary of St. Martins le grand belonging to the said Abbey: which matter after due proceedings being heard in the Court of Star-chamber before the Lords and others of the Kings Council, and Hodey and Newton Chief Justices, which Justices determining, that by Law the party ought to enjoy the privilege of Sanctuary, the Sheriffs were grievously fined in the Star-chamber by particular name: which sentence the Lord Dier, as he hath reported under his own hand, saw upon a reference to him and Justice Southcote out of the Star-chamber, Trin. 11 Regiæ Eliz. concerning the Sanctuary of Westm. for Hampton and Whiteacres being in for debt. And the Lord Dier made this Note with his own hand. Nota, per le Star-chamber. And this is a notable proof of the Jurisdiction of the Court for fining, &c. That the Bill was exhibited to the King, and that the two Chief Justices then did sit, and were Judges (amongst others) in that Court.

Anno 29 H. 6.  
Trin. 11 Eliz.  
Dier. Manuscript  
not imprinted.

For divers Riots, Extortions, and grievous offences by divers persons done against the Kings Peace and Laws, to divers of his Liege people, commandment hath been given by the Kings Writs under the Great Seal (which continue until this day) to appear before the King in the Chancery, or before him and his Council at certain days to answer the premises, which commandment hath been many times disobeyed. Provision is made by that Act for the punishment of such disobedience, as by that Act appeareth. True it is, that this Act was but temporary, yet it affirmeth so much as before hath been said.

Stat. de 31 H. 6.  
cap. 2.  
Vide Rot. Parl.  
1 H. 6. au. 41.

Anno 35 H. 6. a Writ of Certiorari was directed: Thomæ Kent Clerico Concilii: Volentes certis de causis certiorari super tenorem cujusdem Actus Pasch. ultime præterito apud Westm. in Camera Stellata concernen Johannem Ducem Norff. And see there proces of Rebellion against the said Duke.

Ex bundello brevium Regis.  
35 H. 6.

Robert Davers a Counsellor at Law by bill exhibited to the King, &c. for defamation of razing a Record. And the said Robert by the Kings Council in Camera Stellata was acquitted, and John Broket that made the rasure sentenced.

Rot. claus. 11 H. 6.

The Kings Council assembled in the Star-chamber. The Lord Cromwells case.

Rot. claus. 28 H. 6.

An order in the Star-chamber for the Duke of Yorks Council to have access to him, because called into the Chamber by Privy Seal, &c.

Rot. pat. 32 H. 6.  
m. 20.

An exemplification of a complaint by Richard Heron against John Prout, Coram rege & consiliariis suis in Camera Stellata, for a great misdemeanour concerning Wools.

Pat. 3 E. 4. part 1:

Anno 8 E. 4. proceeding by English bill, answer, replication, &c. Coram rege & Concilio.

Rot. petit. 8 E. 4.

Anno 20 E. 4. a sentence in the Star-chamber for turbulent and undue elections between the Abbot of Bury and the Inhabitants.

Rot. pat. 20 E. 4.  
part 2.

We have omitted many other Records, but because they be of like nature, we have contented our self with these. And now we will consult with our Book Cases and Reports of Law: wherein either coram rege & concilio, or coram Rege & concilio in Camera Stellata, is named.

39 E. 3. fo. 14. 19 ass. pl. 1. 40 ass. 38. 13 E. 4. 9. in Camera Stellata. Vid. 27 E. 3. cap. 13. 21 E. 4. 71. in Camera Stellata. 2 R. 3. fo. 2. & 11. in Camera Stellata. 1 H. 7. 3. in Camera Stellata. This Court in ancient times sat but rarely, for three causes. First, for that enormous and exorbitant causes which this Court dealt withall only in those days rarely fell out. Secondly, this Court dealt not with such causes, as other Courts of ordinary Justice might condignly punish, ne dignitas hujus curiæ vilesceret. Thirdly, it very rarely did sit, lest it should draw the Kings Privy Council from matters of State, pro bono publico, to hear private causes, and the principal Judges from their ordinary Courts of Justice.

Book Cases and  
Reports of Law



3 H.7.ca.1.

21 H.8.cap.20.  
The president of  
the Kings Council  
added.

That which now is next to be considered in serie temporis is the Statute of 3 H.7. The Letter whereof followeth :

It is ordained that the Chancellor and Treasurer of England, and the Keeper of the Kings Privy Seal, or two of them calling to them a Bishop and a Temporal Lord of the Kings most Honourable Privy Council, and the two Chief Justices of the Kings Bench and Common Pleas for the time being, or other two Justices in their absence upon Bill or Information put to the said Lord Chancellor, or any other, against any person for unlawful maintenance, giving of liveries, signs and tokens, and retainers by Indentures, Promises, Oaths, Writings or otherwise, Imbraceries of his Subjects, untrue demeaning of Sheriffs in making of Pannels, and other untrue returns, by taking of money, by injuries, by great Riots, and unlawful Assemblies, have Authority to call before them by Writ or Privy Seal the said misdoers, and they and other by their discretion, by whom the truth may be known, to examine, and such as they find therein defective, to punish them after their demerits, after the form and effect of Statutes thereof made in like manner and form as they should, and ought to be punished, if they were thereof convicted after the due order of Law.

Camden Brit.

*Camera Stellatae auctoritatem prudentissimus princeps Henricus septimus ita Parliamentaria adauxit & constabilivit, nonnulli primum instituisse falso opinantur.*

Upon this Statute and that which formerly hath been said, these Six conclusions do follow. The first conclusion is, that this Act of 3 H. 7. did not raise a new Court ; for there was a Court of Star-chamber, and all the Kings Privy Council Judges of the same. For if the said Act did establish a new Court, then should those four or any two of them be only Judges, and the rest that they should call to them, should be but Assistants, and Aidants, and no Judges : for the Statute of 31 E.3. cap.12. which raiseth a new Court, and befoze new Judges, is introductory of a new Law, by having consulance of error in the Exchequer, which shall be reversed in the Exchequer Chamber befoze the Chancellor and Treasurer, or calling to them two Judges, there the Chancellor and Treasurer are only Judges in the Writ of Error, and so in the like. But it is clear that the two Justices in the Star-chamber are Judges, and have voices, as it hath been often resolved, and daily experience teacheth. And further to clear this point, if the Justices should be but Assistants and no Judges in the Star-chamber, for that they are to be called, &c. then, and for the same reason should neither Lord Spiritual nor Temporal, nor other of the Privy Council be Judges, nor have voices in the Court of Star-chamber. And therefore the sudden opinion in 8 H.7. and of others not observing the said distinction between Acts declaratory of proceedings in ancient Court, and Acts introductory of a new Law in raising of a new Court, is both contrary to Law and continual experience.

8 H.7.13. Plow.  
Com.393.

The second conclusion is, that the Act of 3 H. 7. being in the affirmative is not in some things pursued. For where that Act directeth that the Bill or Information should be put to the Lord Chancellor, &c. all Bills and Informations in that Court are constantly and continually directed to the Kings Majesty, as they were befoze the said Act ; and it is a good rule, that where the Act of 3 H.7. is not pursued, there ( if there be many judicial presidents in another sort ) they must have warrant from the ancient Court ; and yet it is good ( as much as may be ) to pursue this Act, there being no greater assurance of jurisdiction then an Act of Parliament. And where there be no such presidents, then the Statute as to the Judges must be pursued : and that was the reason that in default



default of others, Sir Christopher Wray Chief Justice of England for a time, was made Lord Privy Seal to sit in the Star-chamber, Ne curia deficeret in iustitia exhibenda.

Thirdly, that this Act being (as hath been said) in the affirmative, and enumerating divers particular offences, albeit (injuries) is a large word, yet that Court hath jurisdiction of many other, as is manifest by authority, and daily experience, and this must of necessity be in respect of the former jurisdiction.

Fourthly, this Act in one point is introductory of a new Law, which the former Court had not, viz. to examine the Defendant, which being understood after his answer made, to be upon Oath upon Interrogatories, which this ancient Court proceeding in criminal causes had not, nor could have but by Act of Parliament, or prescription, the want whereof especially in matters of frauds and deceits (being like birds closely hatched in hollow trees) was a mean that truth could not be found out, but before the Statute the answer was upon Oath.

Fifthly, where it is said in this Act, And to punish them after their demerits after the form and effect of Statutes made, &c. The Plaintiff may choose whether he will inform upon such Statutes as this Act directeth, or for the offence at the Common Law, as he might have done before this Act: which proveth that this Act taketh not away the former jurisdiction.

6. Lastly, that the Jurisdiction of this Court dealeth not with any offence, that is not malum in se, against the Common Law, or malum prohibitum, against some Statute.

It is to be observed that neither the Statutes of 37 E.3. ca. 18. 38 E.3. ca. 9. 42 E.3. ca. 3. 17 R.2. ca. 6. nor any other Statute taketh away the Jurisdiction of any settled Court of Justice, neither is the Court of Star-chamber named in any of them, and yet was it a Court then and before that time.

Divers special Acts of Parliament have given also Jurisdiction to this Court, viz. 12 R.2. ca. 11. 2 R.2. cap. 5. 13 H.4. cap. 7. 33 H.8. cap. 1. 4 & 5 Ph. & Mar. cap. 8. 5 Eliz. ca. 9, 10. & cap. 14. 27 Eliz. cap. 4.

And seeing the proceeding according to the Laws and Customs of this Realm cannot by one rule of Law suffice to punish in every case the enormity and enormity of some great horrible crimes and offences, and especially of great men, this Court dealeth with them, to the end that the medicine may be according to the disease, and the punishment according to the offence, Ut poena ad paucos, metus ad omnes perveniat, without respect of persons, be they publick or private, great or small.

As for oppression, and other exorbitant offences of great men, (whom inferior Judges and Juries (though they should not) would in respect of their greatness be afraid to offend) bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, dispersers of false and dangerous rumours, news, and scandalous libelling, false and partial misdemeanours of Sheriffs and Bailiffs of liberties, frauds, deceits, great and horrible riots, routs, and unlawful assemblies, single combats, challenges, duels, and other hainous and extraordinary offences and misdemeanours; but ordinary, and such offences as may be sufficiently and condignly punished by the proceeding of the Common Laws, this Court leaveth to the ordinary Courts of Justice and dealeth not with them, ne dignitas hujus Curiae vilesceret, as before is said.

The proceeding in this Court is by Will or Information, by examination of the Defendant upon Interrogatories, and by examination of witnesses, and rarely ore tenus, upon the confession of the party in writing under his hand, which he again must freely confess in open Court, upon which confession in open Court, the Court doth proceed. But if his confession be set down too short, or otherwise then he meant, he may deny it, and then they cannot proceed against him but by Will or Information, which is the fairest way.

The Informations, Wills, Answers, Replications, &c. and Interrogatories in English, and ingrossed in parchment, and filed up. All the Writs and Process of the Court are under the Great Seal: The sentences, Decrees and Acts of

Cambden Brle. 130. In Camera stellata tractantur criminalia, perjuriam, imposturae, dolus malus, excessus, &c.

For proceeding ore tenus, see before Ro. Claus. 17 H. 6. John Fords case Rot. Claus. 42 E.3. the Abbot of Brueries case &c. In notoriois ordo est ordinem juris non servare.



this Court are ingrossed in a fair book with the names of the Lords and others of the Kings Council and Justices that were present and gave their voices.

Pasch. 12 Ja. Reg.

In an Information in this Court by the Attorney General against Sir Stephen Procter, Birkenhead and others for conspiracy against, and scandal of the Earl of Northampton, and Edward Lord Wootton two of his Majesties Privy Council: At the hearing of which cause there sat eight in Court, and four of them condemned the Defendant: and the Lord Chancellor, the two Bishops, and the Chancellor of the Exchequer acquitted him. And the question was, whether the Defendant should be condemned or no: and herein it was moved by the Kings learned Council, that when the voices be equal, that in that case, of which part the Lord Chancellor was, on that side it should be decreed, without regard, whether it was for the Plaintiff or Defendant: And it was resolved, that regularly, & de communi jure, in respect of the equality of the voices no sentence could be given in that case, as it holdeth in the High Court of Parliament, and all other Courts, according to the old rule, Paribus sententiis reus absolvitur. And therefore the Presidents of this Court were to be searched; for ~~except~~ presidents could make a difference between this Court and others, the Defendant could not be sentenced. Whereupon the Court referred this question to the two Chief Justices, that they calling unto them the Kings learned Council to view presidents, whether by the custom of this Court the common rule in other Courts is altered. Before whom in the presence of the Kings learned Council two presidents were produced for proof of the said Custom, viz. one Termino Hil. Anno 39 Eliz. between Gibson Plaintiff, and Griffith and others Defendants: wherein the complaint was for a Riot. And upon hearing of the cause eight sat in Court, and four gave their sentence that the Defendants were guilty, and the other four, whereof the Lord Chancellor was one, did acquit the Defendants, and no sentence of condemnation was ever entered. But the Justices took it, that that president tended not to prove any such custom, for it agreed with the rule in other Courts.

Erodus fo.112.

Hil. 39 Eliz. in Camera Stellata, Gibsons case.

Hil. 45 El. in Camera Stellata, Batherons case.

Another president was shewed, Termino Hil. 45 Eliz. in an Information by the Queens Attorney General against Bathern and others for forging of a Will, &c. Upon the hearing of the cause, the presence consisting of eight, whereof four gave sentence against the Defendant for forgery, and to be punished according to the Statute of 5 Eliz. the other four, whereof the Lord Chancellor was one, found him guilty of a misdemeanour, and not of the forgery, and imposed a fine of five hundred pound only, and imprisonment, and that was entered according to the Lord Chancellors voice. But no rule of Court was shewed for entering thereof in that manner: so as it appeared not that it was ever moved, or debated in Court, and in that case all concluded against the Defendant, and it is but one president. Now whether this one, being such a one as it is, and so late, be sufficient to alter the general Law and course of all other Courts, I leave to the judgment of this honourable Court: And sentence was never given against Sir Stephen Procter agreeable to the general rule in other Courts. *Sic Rot. Parl.* 8 H.6.nu.28.

Mich. 36 & 37 El.

Lawrence Hide and Henry Hide Esquires, exhibited a Bill of complaint against George Coriet and others upon the Statute of 32 H. 8. cap. 9. for unlawful maintenance: and complained for three several Leases for certain years of the Parsonage of Dynton in the County of Wiltes. whereof the Lessor nor any of his Ancestors were in possession within a year before, &c. and pursued the Statute: Upon which part of the Bill (for the Bill concerned Riots and other things) the Defendant demurred in Law, and the causes of the demurrer were, First, that by the said Act this Court had no Jurisdiction of this cause upon this Statute, because that the Act which is introductory of a new Law did not give Jurisdiction to this Court, but the suit must be in the Courts of the Common Law upon this Act, which (said they) also appeared, in that in the remedy given by the Act in this clause, In which action, bill, plaint, or information,



tion no effoign, protection, wager of Law or injunction shall be allowed, and that no effoign, &c. did lie in this Court. The second objection was, This Court had no power to give the Plaintiff remedy to have execution in this Court of the penalty given by this Act. Whereunto upon great advisement it was answered and resolved. As to the first, that the Statute did give jurisdiction to this Court, for it is one of the Kings Courts, &c. intended in the Act: and the Statute of 3 H. 7. declareth that this Court hath jurisdiction of maintenance, and this Act of 32 H. 8. doth add but a greater penalty: and as to the clause of effoign, &c. it must be construed reddendo singula singulis, &c. for as no effoign, &c. lieth in this Court, so no injunction is awarded in the Court of Common Pleas, &c. As to the second, It was resolved that this Court had power in this case to grant execution of the penalty inflicted by this Act, as in a like case had been done, in the case of James Taverner. And both these points had formerly been resolved in this Court, 14 Maii, 27 Eliz. between Robert Bradshaw Esq; Plaintiff, and Robert Charnock Esq; Defendant, upon this Statute, and the case decreed accordingly, and a Commission awarded out of this Court, to enquire of the value, &c. And for these causes by the rule of the whole Court, the demurrer was overruled, and the Defendant ordered to answer.

Dier Mich. 6 & 7  
Eliz. fol. 236.

Dier 15 El. 322.  
in Camera stellat<sup>3</sup>  
Taverners case.  
Pasch. 27 El. in  
Camera stellata.  
Charnocks case.

This Court sitteth twice in the week in the Term time, viz. on Wednesdays, and Fridays, except either of those days fall out to be the first or last day of the Term, and then the Court sitteth not, but it constantly holdeth the next day after the Term ended: but if any cause be begun to be heard in the Term time, and for length or difficulty cannot be sentenced within the Term, it may be continued and sentenced after the Term.

It is the most honorable Court (our Parliament excepted) that is in the Christian world, both in respect of the Judges of the Court, and of their honorable proceeding according to their just Jurisdiction, and the ancient and just orders of the Court. For the Judges of the same are (as you have heard) the Grandæ of the Realm, the Lord Chancellor, the Lord Treasurer, the Lord President of the Kings Council, the Lord Privy Seal, all the Lords Spiritual, Temporal, and others of the Kings most honorable Privy Council, and the principal Judges of the Realm, and such other Lords of Parliament as the King shall name. And they judge upon confession, or deposition of witnesses: And the Court cannot sit for hearing of causes under the number of eight at the least. And it is truly said, Curia Camera stellatæ, si vetustatem spectemus est antiquissima, si dignitatem, honoratissima. This Court, the right institution and ancient orders thereof being observed, doth keep all England in quiet.

¶ The dignity of  
this Court.

¶ The Judges of  
this Court.

Camb. ubi sup.

Albeit the stile of the Court be Coram Rege & Concilio, yet the Kings Council of that Court hear and determine causes there, and the King in Judgment of Law is always in Court. As in the Kings Bench the stile of the Court is Coram Rege, and yet his Justices who are his Council of that Court do hear and determine, and so Coram Rege in Cancellaria, and the like.

So this Court being holden Coram Rege & Concilio, it is or may be compounded of a thræ several Councils. That is to say, of the Lords and others of his Majesties Privy Council, always Judges without appointment, as before it appeareth. 2. *b* The Judges of either Bench and Barons of the Exchequer are of the Kings Council for matter of Law, &c. and the two Chief Justices, or in their absence other two Justices are standing Judges of this Court. 3. The Lords of Parliament are properly *De c magno concilio Regis*, but neither these, being not of the Kings Privy Council, nor any of the rest of the Judges or Barons of the Exchequer are standing Judges of this Court.

*a* See the 1. part  
of the Institutes  
Sect. 164. Verb.  
*veigne les Burgessees*  
*al Parliament.* 4 E.  
3. 2. 3 ass. pl. 15.  
*b* 39 E 3 5. 19 E. 3  
Judgment. 174.  
W. 1. cap. 1. 17 E. 2  
Stat. de templariis.  
16 R. 2. Stat. de  
Præmunire. 43 Ass.

pl. 15. Regist. 124, 125. 191. 27 H. 6. 5. 2 R. 3. 10. *c* 27 August. 5 H. 4. in the Exchange between the King and the Earl of Northumberland, in Thurre. 37 E. 3. cap. 18. &c. Note the Parliament is called *Commune concilium*.

It is now, and of ancient time hath been called the Chamber of the \* Stars, the

¶ The name of this  
Court.

Starz 41 E. 3. ubi sup.



<sup>a</sup> In many of the Records before cited.  
<sup>b</sup> 25 H. 8. cap. 1. Lambard.

Sir Tho. Smith.  
 Lib. 2. cap. 4.  
 ¶ The process.

¶ Officers of the Court sworn.

<sup>a</sup> Star-chamber, the <sup>b</sup> Starred Chamber, in respect the roof of the Court is garnished with golden stars. Some have imagined that it should be called the Star-chamber, because crimina stellionat<sup>a</sup> are there handled: Others of this Saxon word Steeran, to steer or rule as doth the Pilot, because this Court doth steer and govern the ship of the Commonwealth. Others, because it is full of windows: but the true cause of the name is, because, as is aforesaid, the roof is starred. In all records in Latine, it is called Camera stellata.

The process in this Court is Subpoena, Attachment, process of rebellion, &c. all under the Great Seal.

In this Court there is the Clerk of the Council, which is an office of great account, and trust, for he is to receive, endorse, enter, keep, and certify the bills, pleadings, records, orders, rules, sentences and decrees of the Court; and I find that in former times men of great account have had that office in this Court: as to give you a little taste thereof: King H. 6. by his Letters Patents, 15 Julii, An. Regni sui 22. granted the same to Thomas Kent Doctor of the Law for his life, calling him Clericum concilii nostri, and soon after swore him of his Privy Council. King H. 7. An. 1. of his Reign, granted the same office to John Bladefwell Doctor of Laws for term of his life: But hereof this little taste shall suffice.

Lastly, It remaineth to be seen what jurisdiction this Court hath in punishment, and where, and in what cases this Court may inflict punishment by Pillory, papers, whipping, loss of ears, tacking of ears, stigmata in the face, &c. (For it extendeth not to any offence that concerns the life of man or obtruncation of any member: the ears only excepted, and those rarely and in most heinous and detestable offences.) But herein the surest rule is, that seeing it is an ancient Court, the presidents of the Court are to be followed, and the rather for that the Court consisteth of such learned and honourable Judges. And novelties without warrant of presidents are not to be allowed: generally some certain rules are to be followed, especially where no presidents are extant in the case. \* Quod arbitrio Judicis relinquitur, non facile trahit ad effusionem sanguinis: For general Acts of Parliament which inflict punishment, viz. sur forfeiture de corps & de avoir, &c. these are expounded not to extend to life, or member, but to imprisonment, &c.

See the First part of the Institutes, Sect. 745. Verb. Felony. *Majore poena affectus, quam legibus Statut<sup>a</sup> est, non est infamis. Poena gravior ultra legem posita æstimationem conservat. Confessus in jure pro judicato habetur, cum quodammodo sua sententia damnatur. Cum consentiente sponte mitius est agendum.*

*In hac Curia non agitur de delictis ordinariis, ne dignitas hujus Curie vilesceret. Quicquid Judicis auctoritati subjicitur, novitati non subjicitur.*

Ecclesiasticus 20.  
 8. *Qui potestatem sibi sumit injuste, odietur.*

\* See Statut. de moneta temp. E. 1.  
 35 E. 1. de Carlisle.  
 20 E. 3. cap. 4.  
 Vid. 23 El. cap. 2.  
 And note where he shall lose his ears for defamation of the Queen.

## CAP. VI.

*A Court for redress of delays of Judgments in the Kings great Courts.*

**T**his Court is raised by the Statute of 14 E. 3. which followeth in these words.

14 E. 3. cap. 5.  
Stat. 1.  
Rot. Parl. 2 R. 2.  
nu. 63. confirmed  
by Parliament.

*Item,* Because divers mischiefs have happened of that, that in divers places, as well in the Chancery, as in the Kings Bench, the Common Bench, and in the Exchequer, before the Justices assigned, and other Justices to hear and determine deputed, the judgments have been delayed, sometimes by difficulty, sometimes by divers opinions of the Judges, and sometimes for some other cause: It is assented, established, and accorded, that from henceforth at every Parliament shall be chosen a Prelate, two Earls, and two Barons, which shall have commission and power of the King to hear by Petition delivered unto them the complaints of those that will complain them of such delays and grievances made, and they shall have power to do come before them at *Westminster*, or elsewhere, where the places or any of them shall be, the tenor of Records and Processess of such judgments so delayed, and to cause the same Justices to come before them, which shall be then present, to hear their cause and reasons of such delays: which cause and reasons so heard by \* good advice of themselves, the Chancellor, Treasurer, the Justices of the one Bench and of the other, and other of the Kings Council, as many and such as shall seem convenient, shall proceed to take a good accord, and make a good judgment: and according to the same accord so taken, the tenor of the same Record, together with the judgment which shall be accorded, shall be remanded before the Justices, before whom the Plea did depend; and that they shall give judgment according to the same Record: and in case it seemeth to them that the difficulty be so great, that it may not well be determined without assent of the Parliament, that the said tenor or tenors shall be brought by the said Prelate, Earls and Barons in the next Parliament, and there shall be a final accord taken what judgment ought to be given in this case, and according to this accord it shall be commanded to the Judges before whom the Plea did depend that they shall proceed to give judgment without delay.

Judgments delayed.

\* Nota, by good advice of the Chancellor, Treasurer, and Justices. Good accord.

Vid. Regist. f. 124. B.  
Rex Johanni de  
E. Militi, &c.

Before the making of this Statute, delay of Judgments was forbidden both by the Common Law, and by Acts of Parliament. By the Common Law, 1. It is required, that Plena & celeris justitia fiat partibus, &c. not plena alone, nor celeris alone, but both plena & celeris. All Writs of Præcipe quod reddat, are, Quod iuste & sine dilatione reddat, &c. All judicial Writs are sine dilatione, &c. 2. There did and yet doth lie a Writ de procedendo ad iudicium, when the Justices or Judges of any Court of Record, or not of Record, delayed the party plaintiff or defendant, demandant or tenant and would not give judgment: and thereupon an Alias, Plur, and an Attachment, &c. doth lie. And the words of the Writ

Regist. 131. a.  
F.N.B. 23. e.  
And so upon Co-  
nufancee granted.

Regist. fol. 22.  
F.N.B. 153. b. &c.  
Cust. de Norm.  
cap. 27.



Diuturna dilatio.

*Writ* be, Quia redditio iudicii loquelæ quæ est coram vobis, &c. de quadam transgressionem eidem A. per præfat' B. illata, ut dicitur, diuturnam cepit dilationem ad grave damnum ipsius A. sicut ex querela sua accepimus; Vobis præcipimus quod ad iudicium inde reddendum cum ea celeritate quæ secundum legem & consuetudinem Regni nostri procedas, &c.

Regist. fo. 18. F.N.  
B. fol. 20. a. & c.

3. Likewise when Justices or Judges of any Court of record, or not of record gave Judgment, and delayed the party of his execution, the party grieved may have a *Writ* De executione iudicii; by which *Writ* the Justices or Judges are commanded, Quod executionem iudicii nuper redditæ, &c. de loquela quæ fuit, &c. per breve nostrum, &c. sine dilatione fieri fac'. And thereupon an Alias Plur' and Attachment, &c. do lie.

See hereafter, cap.  
Exchequer and  
Exchequer  
Chamber.

4. By the meeting together upon adjournment of the cause out of the Court, where the cause dependeth, &c. All the Judges, &c. which now we call an Exchequer Chamber cause, warranted by the Common Law and ancient presidents before this Statute: and the frequent use of this Court of Exchequer chamber hath been the cause that this Court upon the Act of 14 E.3. hath been rarely put in ure.

2 E.3. f.7. Ellys  
Callers case. Bract.  
lib. 1. c. 2. Rot. Parl.  
14 E.3. nu. ult.  
Sir Geff. Stanton's  
case.

5. By the Kings *Writ* comprehending quod si difficultas aliqua interfit, that the Record should be certified into the Parliament, and to adjourn the parties to be there at a certain day. Si obscurum & difficile sit iudicium, ponantur iudicia in respect' usque magnam curiam. An excellent Record, whereof you may read in the Parliament holden at Westminster the Tuesday after the translation of Becket, Anno 14 E.3.

Mag. Cart. cap. 29.

Secondly, by Acts of Parliament, Nulli vendemus, nulli negabimus, aut differemus iustitiam vel rectum.

2 E.3. fol. 3. per  
Aldham.  
14 E.3. jour. 24.  
18 E.3. 47. 57.  
31 E.3. an. 161.  
39 E.3. 37.  
41 H.4. 5. 76.  
9 H. 6. 58. b.  
5 E.4. 132. Fortesc.  
c. 5. F.N.B. 240. d.  
\* Regist. fo.  
F.N.B. 240. d.

That it shall not be commanded neither by the Great seal, nor by the Little seal, nor by Letters, nor any other cause to delay right: and albeit such commandment come, &c. that by them the Justices surcease not to do right in no manner. Vide 2 E.3. cap. 8. 14 E.3. cap. 14. 18 E.3. Stat. 3. 2 R.2. a Statute not in print, Rot. Parl. nu. 51. whereby it is enacted, that no Justice shall stay justice for any *Writ*, Letter of the Great seal or Privy seal, or other commandment whatsoever against the Laws and Statutes before that time made, Rot. Parl. 2 H. 4. n. 64. An. 5 H. 4. n. 33. all which are declaratory of the Common Law. \* And upon the said Act of 2 E.3. a *Writ* is framed, directed to the Justices, by which they are commanded. Quod ad iustitiam partibus, &c. faciend' virtute alicujus mandati de magno sigillo, & parvo sigillo vobis direct' seu dirigend' nullatenus superfedatis, &c. And thus much for the Common Law and Acts of Parliament.

This Statute of 14 E.3. cap. 5. consisteth of two general parts, viz. the Preamble and the Body of the Act. In the Preamble three things are to be observed. 1. That (notwithstanding the provision of the Common Law) mischiefs do happen by delay of judgments. 2. It enumerateth in what Courts these delays do happen, viz. in the Chancery, in the Kings Bench, the Common Bench, and the Exchequer, the Justices assigned, and other Justices to hear and determine deputed. 3. It declareth how these delays have grown, viz. sometime for difficulty of the matter in Law, sometime in diversity of opinion of the Judges, and sometimes for some other cause, that is, by Commandments, Letters, or Messages of the King or great Men, &c. In the Body of the Act we have collected many observations. 1. That at every Parliament there shall be chosen a Prelate, two Earls, and two Barons, (or one Bishop, two Earls, and two Barons.) viz. At this Parliament were chosen, 1. John Stratford Archbishop of Canterbury, (a man famous for learning, loyalty, and vertuous living.) 2. Rich. Fitzalan Earl of Arundell, a man of great wisdom, prowess, and integrity. 3. William Clynton Earl of Huntingdon, and Admiral of England, a man lately before advanced for his singular valor, wisdom, and vertue. 4. The Lord Wake of Lidel: and 5. Ralph Lord Basset of Drayton, two of the most renowned Barons of England. Quos omnes honoris causa nomino.



2. This Act doth appoint that the Prelate, two Earls, and two Barons are to have a Commission and power of the King under the Great Seal (and none of them can be absent) which Commission is to endure until the next Parliament.

3. This Commission and power consisteth on ten parts. 1. Ad audiendum, to hear the petition delivered to them, the complaints of those that will complain to them of such delays or grievances made. 2. Ad venire faciend' to come before them at Westminster, or else where, the tenor of the Records and Processes of such Judgments so delayed; and this is to be done by the Kings Writ of Certiorari. 3. Ad venire faciend', to cause the same Justices to come before them. 4. Ad audiend' suas rationes & causas talium dilationum, to hear their reasons and causes of such delays which ought to be entered of Record. 5. Which causes and reasons so heard, Ad procedendum, to proceed to make a good accord. 6. But this must be done not only by themselves, but by the good advice of certain assistants appointed by the Act, viz. the Chancellor, Treasurer, the Justices of the one Bench and the other, and other of the Kings Council, as many, and such as they shall think convenient. 7. Ad capiendum, to take a good accord of the assistants. 8. Ad faciendum, to make a good Judgment. 9. Ad remandandum, to remand before the Justices, before whom the plea did depend, the tenor of the said Record, together with the Judgment that so shall be accorded. Lastly, that those Justices shall presently give judgment according to the said Record.

A Commission granted in 18 E. 3. grounded upon this Statute, and referring to the same being enacted, as there it appeareth, at a Parliament holden die Mercurii proxima post medium Quadragesime Anno 14 E. 3. regni Angliæ & Franciæ primo, there being two Parliaments in that year, which you may read, being worthy of observation, for it is a good exposition of this Act.

4. It is further provided by the said Act of 14 E. 3. that in case it seemeth to them, that the difficulty is so great, that it cannot well be determined without assent of Parliament, that the tenor or tenors shall be brought by the said Prelate, Earls and Barons, unto the next Parliament, and there shall final accord be taken what judgment shall be given in this case.

a It is better that the demandant be delayed, then the tenant disherited, or that the Law be altered. Shard, we cannot nor will delay any man in respect of our Oath.

b The Justices ought to delay no man in the name of the King where the King hath no right. The demandant shall not be legally delayed twice for one cause.

c Delay in a Quare Impedit, though it be by essoign, is a disturbance. d Semper fur est in mora. e In circuitu impii ambulat.

f In divers cases the party grieved shall have an action for unjust delay.

g Tolle moram, semper nocuit differre paratis.

But seeing neither the Common Law, nor any of the Acts of Parliament do extend to Ecclesiastical Courts, it is then demanded, What if an inferiour Ordinary will refuse, or delay to admit and institute a Clerk presented by the right Patron, to a Church within his Diocese, or the like: Or delay, or refuse to give sentence in a case depending before him? It is answered, that the Archbishop of the Province may grant his Letters under his Seal to all and singular Clerks of his Province, to admonish the Ordinary, within nine days to perform that which by Justice is desired, or otherwise to cite him to appear before him or his Official at a day in those Letters prefixed, and to cite the party that hath suffered such delay, then and there likewise to appear, and further to intimate to the said Ordinary, that if he neither perform that which is enjoined, nor appear, he himself without further delay will perform the justice required. Or in the former of the said cases, the party delayed may have his Quare imp. but that is thought not to be so speedy a remedy.

Rot. Pat. 18 E. 3: 2 part.

¶ Rules concerning delays.

a 18 E. 3. 54. a.

13 H. 4. 4.

24 E. 3. 64. a.

b 4 E. 3. 2. a.

22 H. 6. 39. per

Newton.

10 E. 3. 57.

40 E. 3. 22. & c.

c 4 E. 3. 14.

6 E. 3. 4.

d Bracton.

e Plal. 12. 9.

f 44 E. 3. 4.

18 E. 3. 12, 13.

20 H. 6. 10.

21 E. 4. 22, 23.

F. N. B. 96. f. 97. b.

g Ovidius.

h This is called duplex querela: necessary to be known for finding of Infrustrations, & c.



## CAP. VII.

*The Court of Kings-Bench, Coram Rege.*

Lib.3.cap.7.  
fo.105.b.

Fo.108.2.

\* Nota.

\* A granter prohibitions.

Lib. niger in  
Scaccarlo cap.4.

\* Note this word.

a See Britton f. 1. speaking of the King, Et pur ceo que nous ne suffisons in nostre proper person a oier & terminer tous querels del people. Avomus partie nostre charge en plusieurs parts come est ordeine, &c.

20 E.3.cap.1.

b Stat.de Marl.

52 H.3.ca.1.

\* Vid. 4 H.4.ca.22.

c 24 H.8.cap.2.

In effect.

d Bract.lib.1. ca.5. fol.3.b.

e 20 E.3.cap.1.

speaking in the Kings person.

**B**Racton doth make in few words a notable expression of this Court. Habet Rex plures Curias in quibus diversæ actiones terminantur, & illarum curiarum habet unam propriam, sicut Aulam regiam, & Justiciarios capitales qui proprias causas Regias terminant, & aliorum omnium per querelam, vel per privilegium, seu libertatem. And soon after speaking of the Justices of this Court saith: Item Justiciariorum quidam sunt capitales, generales, perpetui, & majores à latere regis residentes, qui omnium aliorum corrigere tenentur injurias, & errores.

And Britton saith: In droit des Justices que son assignes de nous fuer & tener nostre lieu ou que nous seons en Anglitterre. \* Voilons que eux eiant conufance de amender faux judgments, & de terminer appeales & auters trespasses faitz encounter nostre peace, & \* encounter nostre jurisdiction, & lour record se esteant solong; ceo que nous manderons per nostre bre.

Fleta in describing this Court saith: Habet & Rex Curiam suam & Justiciarios suos tam milites quam clericos locum suum tenentes in Anglia, coram quibus, & non alibi nisi coram semetipso & concilio suo vel Auditoribus specialibus falsa judicia & errores Justiciariorum revertuntur & corriguntur: ibidem etiam terminantur brevvia de appellis, & alia brevvia super actionibus criminalibus & injuriarum contra pacem regis illatarum impetrata, & omnia, in quibus continetur ubi tunc fuerimus in Anglia.

In the Black Book of the Exchequer, it is thus said of the Chief Justice of this Court: Capitalis Justitia præsidet primus in regno. Out of these three ancient Authoꝝ we observe these six conclusions.

First, where Bracton saith, Habet Rex plures curias in quibus diversæ actiones terminantur. Hereby, and in effect by a Britton, this conclusion followeth, that the King hath committed and distributed all his whole power of Judicature to several Courts of Justice, and therefore the judgment must be, Ideo consideratum est per Curiam. And herewith do agree divers Acts of Parliament and Book cases, some whereof, for illustration, we will briefly remember; and leade the judicious reader to the rest.

b Provisum, concordatum & concessum est quod tam majores, quam minores justitiam habeant & recipiant in curia Domini Regis. c That the Laws Ecclesiastical and Temporal were and yet are administred, adjudged, and executed by sundry Judges, &c. d Expedit etiam magistratus reipublicæ constitui, quia per eos qui juredicendo præfunt effectus rei accipitur; parum est enim jus in civitate esse, nisi sint qui possunt jura gerere.

e For the pleasure of God and quietness of our Subjects, as to save our Conscience, and to keep our Oath, by the assent of our Great men and other of our Council, we have commanded our Justices, that they shall from henceforth do even Law and Execution of right to all our Subjects, rich and poor, without having regard to any person, without letting to do right for any Letters or commandment which may come to them from us, or from any other, or by any other cause.

Agreable to that great Canon of the Law Anno 3 E. 1. which we have translated into Latine: Rex præcipit quod pax sacro sanctæ Ecclesiæ & regni solide custodiatur & conservetur in omnibus, quodq; justitia singulis tam pauperibus quam divitibus

W.1. An. 3 E.1. cap.1.

Fleta lib.1.ca.29.



divitibus administratur, nulla habita personarum ratione. See the second part of the Institutes, W. 1. cap. 1.

1 H. 4. the King hath committed all his power judicial, some in one Court, and some in another, so as if any would render himself to the judgment of the King in such case where the King hath committed all his power judicial to others, such a render should be to no effect. And 8 H. 6. the King doth judge by his Judges (the King having distributed his power judicial to several Courts) And the King hath wholly left matters of Judicature according to his Laws to his Judges. 8 H. 4. fo. 19.  
8 H. 6. 20. & tit. Grant, F. 5.

And albeit it be enacted that the Delinquent shall be fined at the will of the King, Non Dominus Rex in camera sua, nec aliter nisi per justiciarios suos (finem imponit) & hæc est voluntas regis, viz. per Justiciarios & legem suam, unum est dicere. 2 R. 3. fo. 11.

The second conclusion is, that in those days this Court of Kings Bench did follow the Court: and therefore Bracton calleth it Aulam regiam, because they sat in the Kings Hall. Britton calleth the Justices of this Court, Justices assignes de nous fuer: and Fleta, ubi tunc fuimus in Anglia.

The third is, that it is called the Kings Bench, and the Pleas thereof Coram rege: because in this Court (as Bracton saith) those Capitales justiciarii proprias regis causas terminant, and therefore the King himself cannot be Judge in propria causa.

The fourth is, that under these words [proprias causas] are included three things. First, all pleas of the Crown; as all manner of Treasons, Felonies, and other pleas of the Crown which ex congruo are aptly called propriæ causæ regis, because they are placita coronæ regis. Secondly, regularly to examine and correct all and all manner of errors in fact, and in Law, of all the Judges and Justices of the \* Realm in their judgments, process, and proceeding in Courts of record, and not only in pleas of the Crown, but in all pleas, real, personal, and mixt, (the Court of the Exchequer excepted, as hereafter shall appear.) And this is proprium quarto modo to the King in this Court: for regularly no other Court hath the like jurisdiction, and therefore may be well called propria causa regis. And these two be of high and sovereign jurisdiction. a Thirdly, this Court hath not only jurisdiction to correct errors in judicial proceeding, but other errors and misdemeanours extrajudicial tending to the breach of the peace, or oppression of the subjects, or raising of faction, controversy, debate, or any other manner of misgovernment; so that no wrong or injury, either publick or private, can be done, but that this shall be reformed or punished in one Court or other by due course of Law. As if any person be committed to prison, this Court upon motion ought to grant an Habeas corpus, and upon return of the cause do justice and relieve the party wronged. And this may be done though the party grieved hath no privilege in this Court. It granteth prohibitions to Courts Temporal and Ecclesiastical, to keep them within their proper jurisdiction. Also this Court may bail any person for any offence whatsoever. And if a Freeman in City, Burgh or Town Corporate, be disfranchised unjustly, albeit he hath no privilege in this Court, yet this Court may relieve the party, as it appeareth in James Bagges case, ubi supra, & sic in similibus. Of these you may read in Glanvil lib. 1. cap. 2. & c. & lib. 10. cap. 18. and in the third part of the Institutes per totum, & Stanf. per totum.  
\* And in Ire. and of errors in the Kings Bench there. Lib 7. fo. 18. F. N. B. 22. 34 Ast. 7. 39 E. 3. Error 88. a Lib. 11. fo. 98.

Fourthly, this Court may hold plea by Writ out of the Chancery of all trespasses done Vi & armis, of Replevins, of \* Quare impedit, &c.

b See the second part of the Institutes, the 11 Chapter of Magna Carta, Communia placita non sequantur curiam nostram.

Fifthly, this Court hath power to hold plea by Bill for debt, detinue, covenant, promise, and all other personal actions, ejectione firmæ, and the like, against any that is in custodia Marechalli, or any Officer, Minister, or Clerk of the Court: and the reason hereof is, for that if they should be sued in any other Court they should have the privilege of this Court: and lest there should be a failure of Justice (which is so much abhorred in Law) they shall be impleaded here by Bill, though these actions be common pleas, and are not restrained by the said Act

Jam. Bagges case. Vid. 10 E. 3. ca. 3. Marshalsea.

F. N. B. 89. 92.

\* Tr. 19 E. 3. coram rege Rot. 55. Linc.

b 2 part of the Institutes, Magna Carta cap. 11.



See the second  
part of the Inti-  
tutes, ubi sup.  
27 H. 3. coram  
Rege. Rot 9.  
H. 6 & Hunt.

31 H. 6. 10. b. ad-  
judge.

1 H. 7. 12.  
14 H. 7. 14.  
21 E. 3. 46.  
11 H. 4. 49. in na-  
tivo habendo.

F.N.B. 177.  
30 ass. 35. Ass.  
de mord.

3 H. 4. 7.

See more hereof  
in the Chapter of  
the Exchequer.  
31 E. 3. cap. 12.

a Rot. Par. 18 E. 1.  
nu. 97. Placit.  
Int. 10. de novo  
Burgo & Regman,  
&c.

b W. 1. cap. 14.  
Against prepos-  
terous hearings.

c Art. super Cart.  
28 E. 1. cap. 5.  
Glan. temp. H. 2.

lib. 2. ca. 6. & lib. 11. ca. 1. Coram Justiciis Domini Regis in Banco sedentibus. Vid. adjudicat' coram Rege in every Term,  
from 1 E. 1. during all his reign in every several Term in the year. And in all those times and Terms the Court of  
Chancery did sit.

of Magna Carta, ubi supra. Likewise the Officers, Ministers, and Clerks of this Court privileged by Law in respect of their necessary attendance in Court, may implead others by Will in the actions aforesaid. And all this appeareth by Bracton, who lived when Magna Carta was made, ubi supra: where he saith, Et aliorum omnium per querelam vel per privilegium sive libertatem. And continual experience concurrereth with antiquity herein.

H. P. captus per querimoniam mercatorum Flandriæ & imprisonatus offert domino regi *Hus* & *Hunt* in plegio ad standum recto, & ad respondendum prædictis mercatoribus, & omnibus aliis qui versus eum loqui voluerint, &c. This plea was after the Statute of Magna Carta, Anno 9 H. 3. Of these words *Hus* & *Hunt*, two French words: *Hus* signifying an Elder-tree, and *Hunt* the staff of a Halbert, &c. I leave the conjecture that some have made thereof to themselves: we think it was then common bail now changed to Do and Ro, and the rather for this word [offert.] And it is observable, that then putting in bail at one mans suit, he was in custodia Marechalli to answer all others which would sue him by Will, and this continueth to this day. If any person be in custodia Marechalli, &c. be it by commitment, or by Latitat, Will of Bid' or other Proces of Law, it is sufficient to give the Court jurisdiction: and the rather, for that the Court of Common pleas is not able to dispatch all the subjects causes, if the said actions should be confined only to that Court. And seeing none but Serjeants at Law can practise in the Court of Common pleas, it is necessary that in this Court of Kings Bench Apprentices and other Counsellors of Law might by experience inable themselves to be called Serjeants afterwards; otherwise Serjeants must want experience, which is the life of their profession. And the proceedings in that Court for so long time, and under so many honourable Judges and reverend Sages of the Law, hath gotten such a foundation, as cannot without an Act of Parliament be shaken. And the errors in the Kings Bench cannot be reversed (but in certain particular actions by the Statute of 27 Eliz. cap. 8. wherein the jurisdiction of the Court is saved) but in the High Court of Parliament, as befoze in the Chapter of the Court of Parliament appeareth.

Directly, if a Writ in a real action be abated by judgment in the Court of Common pleas, and in a Writ of Error the Judgment is reversed in this Court, and the Writ is adjudged good, this Court shall proceed upon this Writ, and is not restrained by Magna Carta, ubi supra, ne curia domini Regis deficeret in justitia exhibenda.

This Court may hold plea in Assise of novel disseisin without any patent, for it is querela and not placitum, and so not within these words communia placita, as it hath been expounded and warranted by continual experience.

A Scire fac' to repeal a Patent of the King may be brought in this Court. And where Fleta saith, Nisi coram semetipso & concilio suo, vel Auditoribus specialibus falsa judicia ac errores justiciariorum revertuntur: It is to be known that all the Common Law errors in the Court of Exchequer (being the proper Court of the King for his revenue and profit) were examinable before Commissioners appointed by the Kings Writ under his Great Seal, which Fleta here calleth Auditores speciales. But now by the Statute of 31 E. 3. the Chancellor and Treasurer taking to them the Justices and other sage persons, such as to them seemeth to be taken, shall examine the errors in the Exchequer, &c.

a In ancient time, when pleas were holden in Parliament, when the parties descended to issue, the Record was adjourned into the Kings Bench to be tried there.

b See the Statute of W. 1. against preposterous hearings in this Court, and the exposition of the same in the second part of the Institutes.

c By the Statute of Artic' super Cart. the Chancellor and the Justices of the Kings Bench were to follow the Court: but notwithstanding both the Chancery and the Kings Bench were at this time seised Courts, during the several

Terms



Terms of the year, as by infinite records, both before and after this Statute doth appear. So as at this time they did not attend in the Kings Court, but when they were called, yet were accounted as parcel of the Kings household as long as they followed the Court: but this cumbersome attendance wholly ceased in the Reign of E. 3. and yet the Lord Chancellor would have had his purveyance, as if he had continued still as one of the household, until he and all others, but those of the Kings, Queens, or Princes household only, were restrained by Act of Parliament. 34 E. 3. cap. 2.

Also upon perusal of the Records in the Reign of H. 3. from the beginning of his Reign until the ending of it, this Court sat in the Term time where the other Courts of Justice did sit. And the pleas were stiled to be holden Coram Rege as to this day they are: And this appeareth by Fitz. Abzidgment, in the titles of Corone, of Brief, of Wast, &c. and by Bracton who in many places voucheth Judgments in the Reign of H. 3. in Terms Coram Rege. And this appeareth also in elder times: but hereof thus much shall suffice to prove, that at the making of the said Act of 28 E. 1. and long before this Court in Term times sat with the Kings other Courts, and specially for Pleas of the Crown, &c. and that the said Act is to be intended, that the Chancellor and the Judges of this Court should attend the King and follow the Court when they were required.

It is truly said that the Justices de banco Regis have supream authority, the King himself sitting there as the Law intends. They be more then Justices in Cire.

The Justices in this Court are the soveraign Justices of Oier and Terminer, Gaol-delivery, Conserbators of the peace, &c. in the Realm. See the books in the margin, you shall find excellent matter of learning concerning the supream jurisdiction of this Court.

In this Court the Kings of this Realm have sit in the High Bench, and the Judges of that Court on the lower Bench at his feet; but Judicature only belongeth to the Judges of that Court, and in his presence they answer all motions, &c.

The Justices of this Court are the soveraign Coroners of the Land, and therefore where the Sheriff and Coroners may receive appeals by bill, a Fortiori the Justices of this Court may do it.

a So high is the authority of this Court, that when it comes and sits in any County, the Justices of Cire, of Oier and Terminer, Gaol-delivery, b they which have consuance, &c. do cease without any writing to them. But if any indictment of Treason or Felony in a forrain County be removed before certain Commissioners of Oier and Terminer in the County where this Court sits, yet they may proceed, because this Court (for that this indictment was not removed before them) cannot proceed for that offence. But if an indictment be taken in Midd. in the Vacation, and after this Court sit in the next Term in the same County (if this Court be adjourned) then may special Commissioners of Oier and Terminer, &c. in the interim proceed upon that indictment, but the more usual way is by special Commission. And all this was resolved by all the Judges of England at Winchester Term, An. 1 Jacobi Regis, in the case of Sir Everard Digby and others: and so had it been resolved, Mich. 25. & 26 Eliz. in the case of Arden and Somerville, for this kind of special Commission of Oier and Terminer: and herewith agreeth Pl. Com. in the Earl of Leic' case, An. 1 Mar. Regiæ.

And so supream is the jurisdiction of this Court, that if any Record be removed into this Court, it cannot (being as it were in his center) be remanded back, unless it be by Act of Parliament. And this appeareth by the Judgment of the Parliament in Anno 6 H. 8. but by the authority of that Act indictments of Felonies and Murders removed into the Kings Bench may by the Justices of that Court be remanded, and this Court may send down as well the bodies of all Felons and Murderers, as their indictments into the Counties where the same murders or felonies were committed or done, &c. in such manner, &c. as if the indictments had not been brought into the Kings Bench.

W<sup>u</sup>

34 E. 3. cap. 2.

And so did the Chancery, both of them being to some purposes but one Court, as it appeareth in the Chapter of the Court of Chancery.

3 El. Dier 187.

27 Aff. p. 1.

7 E. 4. 18. 4 H. 7. 18

14 H. 7. 21 lib. 9.

fol. 118. a & b.

Seignior Sanchers case.

17 E. 3. 13. a. Lib. 4.

fol. 57. in the Saddlers case. Pl. Com.

269.

a 21 Aff. 12. 27 Aff.

1. 28 Aff. 52.

21 H. 7. 29.

b Pasch. 12 E. 3.

Coram Rege, Rot.

99. Chicest. W. 1.

cap. 3. Lib. 9. fol.

118. Ubi supra.

Hil. 1 Jac. Sir

Walter Raleighs

case, &c.

Pl. Com. fol. 338.

Court. de Leic.

case acc<sup>d</sup>.

22 E. 3. 6. b. 24 E.

3. 73. 29 Aff. 52.

Stanf. pl. Cor. 15.

6 H. 8. cap. 6. It ex-

tendeth only to

Felonies and

Murders.



See before cap. Parliam. p. 21. when a Writ of Error is sued of a Judgment, *Coram Rege*, they proceed *Super, tenore recordi*, and the record itself remaineth in this Court.  
2 H. 4. cap. 10.

26 Ass. p. 43.

Designatio Justiciariorum est à Rege jurisdictionis vero ordinaria à lege.

\* Glanvil lib. 1. cap. 6. 13. &c. s. penultimo.  
a Lib. nigro in Scaccario. par. 1. cap. 4.

Never in any legal record (which we have seen) they were called *Summi Justicarii*.  
Rot. Cart. 45 H. 3. 13. Aug.

Capitalis Justiciarius Angliæ.

But the Justices of the Kings Bench of their own authority may grant a *Nisi prius* in case of treason, felony, and other pleas; for there they send but the transcript of the Record, and not the Record it self, as shall be said in the Chapter of Justices of *Nisi prius*. But if the Justices of the Kings Bench do perceive that any indictment is to be removed into that Court by practise or for delay, the Court may refuse to receive the same, before it be entered of Record, and remand the same back again for justice to be done.

By the Statute of 2 H. 4. the Clerk of the Crown of this Court, if fourscore or an hundred men be indicted of felony or trespass, of one felony, or one trespass, and they plead to an issue, as not guilty, the said Clerk ought not to take for the *Venire fac*, nor for the entering of the plea but two shillings only, and not two shillings for every one, which Act is made in affirmance of the Common Law. So if one man be indicted of two several felonies or trespasses, and is acquitted, he shall pay but for one deliverance.

Out of this Court are other Courts derived, as from one fountain several springs and rivers, in respect of the multiplicity of causes, which have increased. *Jurisdictio istius Curie est originalis seu ordinaria, & non delegata*. The Justices of this Court have no Commission, Letters Patents or other means to hold pleas, &c. but their power is original and ordinary. They were called anciently \* *Justiciæ, Justicarii, locum tenentes Domini Regis, &c.* The Chief Justice, *Justicia Angliæ, Justitia prima, Justiciarius Angliæ, Justiciarius Angliæ capitalis*, and *Justiciarius noster capitalis ad placita coram nobis terminand*. To observe the changes of these names, and the reason and change thereof, is worthy of observation.

Before the Reign of E. 1. the Chief Justice of this Court was created by Letters Patents, and the form thereof (taking one example for all) was in these words.

*Rex, &c. Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Vicecomitibus, Forestariis, & omnibus aliis fidelibus Regni Angliæ, Salutem. Cum pro conservatione nostra, & tranquillitatis Regni nostri, & ad justitiam universis & singulis de Regno nostro exhibendum constituerimus dilectum & fidelem nostrum Philippum Basset Justiciarium Angliæ quamdiu nobis placuerit capitalem: Vobis mandamus in fide qua nobis tenemini firmiter injungentes, quatenus in omnibus quæ ad officium Justiciarii prædicti, nec non ad conservationem pacis nostræ & Regni nostri eidem dum in officio prædicto steterit, plenius sitis intendentes, Teste Rege, &c.*

Herein six things are to be observed. 1. That the creation of his office was by Letters Patents. 2. That this officer was originally instituted for three things. 1. Pro conservatione nostra. 2. Tranquillitatis Regni nostri. 3. \* Ad justitiam universis & singulis de Regno nostro exhibendam. The third thing to be observed is, that he was stiled *Justiciarius Angliæ capitalis*. 4. That Philip Basset was constituted Chief Justice of England, and after made Knight, for he was not Knight at the making of the Letters Patents. This Philip was of Wellesby in the County of Northampton, and was excellently learned in the Laws of the Realm; he was younger brother of Baron Basset of Draiton Basset in the County of Staff. 5. That he was constituted *quamdiu nobis placuerit*. Lastly, The clause of attendance, and the persons that are to give attendance, &c. to him, are very remarkable. This Philip Basset was the last of this kind of creation by any like Letters Patents, and he died Chief Justice near to the end of the Reign of H. 3. King E. 1. being a wise and prudent Prince, knowing that *Cui plus licet quam par est, plus vult quam licet*, (as most of these *summi Justicarii* did) made three alterations. 1. By limitation of his Authority. 2. By changing *Summus Justiciarius*, to *Capitalis Justic*. 3. By a new kind of creation, viz. by Writ, lest if he had continued his former manner of creation, he might

\* This was the original jurisdiction of this Court.



might have had a desire of his former Authority, which they do expressly appear by the Writ yet in use. viz.

*Rex, &c. E. C. militi Salutem. Sciatis quod constituimus vos Justiciarium nostrum capitalem ad placita coram nobis tenenda, durante beneplacito nostro. Teste, &c.*

Which Writ being called Breve doth in few words comprehend the substance of the former Letters Patents: for Capitalis Justiciarius noster and ad placita coram nobis tenenda includes all that which was truly intended to be granted to him in the former Letters Patents, which alteration was made by Authority of Parliament, though not now extant. For it is a rule in Law, that ancient offices must be granted in such forms and in such manner, as they have used to be, unless the alteration were by Authority of Parliament. And continual experience approbeth, that for many successions of ages without intermission, they have been, and yet are called by the said Writ, Et optima legum interpretis consuetudo. But after the said alteration, viz. in anno 25 E. 1. Reginaldus de Grey (was styled) Justiciarius Angliæ, and he was in legal proceedings called Capitalis Justiciarius noster, when his Patent was, Capitalis Justiciarius Angliæ.

We have seen a fine in these words: *Hæc est finalis concordia facta in Curia Domini Regis apud Westm<sup>a</sup> à die Sancti Michaelis in tres septimanas anno Regni Regis Henrici filii Regis Johannis 3. coram Domino Huberto de Burgo capitali Justiciario Angliæ & aliis Domini Regis fidelibus tunc ibi presentibus.*

*a* In the Writ De homine replegiand<sup>o</sup>, he (which was formerly called Capitalis Justiciarius Angliæ) is called Capitalis Justic<sup>us</sup> noster, and sometime Cap. Justic<sup>us</sup> Regis. The stile of this Court of Kings Bench is Anglia in the margent: and in divers Acts of Parliament he is called Chief Justice of England. 34 H. 8. cap. 26. 37 H. 8. cap. 12. 2 E. 6. cap. 13. 5 E. 6. cap. 11.

The Chief Justice in Ireland is called Capitalis Justic<sup>us</sup> Hiberniæ at this day.

Pasch. 13 E. 1. (the pleas in this Court are Coram Rege) then were stiled thus, Placita coram locum Domini Regis tenentibus, &c. Ideo venit inde jurata coram Rege vel ejus locum tenentibus, 15 Paschæ, &c. within which words all the Judges of the Kings Bench were included.

*b* Anno Dom. 969. in the Abby of Ramsey this Epitaph was ingraven, &c. D. Ailivinus inclyti Regis Edgari cognatus totius Angliæ<sup>\*</sup> Aldermanus, &c. who was without question Chief Justice of all England. Inter leges Alveredi cap. 34. he is called *Cyninger ealdorman*. i. Regis Aldermannus five Senator, five Judex. Vide cap. 3. 15. & 38. Et inter leges Edwardi cap. 35.

The rest of the Judges of the Kings Bench have their Officers by Letters Patents in these words. Rex omnibus ad quos presentes literæ pervenerint, Salutem. Sciatis quod constituimus dilectum & fidelem Johannem Doderidge militem unum Judiciariorum ad Placita coram nobis tenenda durante beneplacito nostro, Teste, &c. *c* These Justices of the Kings Bench are stiled 1. Capitales. 2. Generales. 3. Perpetui. 4. Majores à latere Regis residentes: but the Chief Justice is only called by the King, Capitalis Justiciarius noster. They are called 1. Capitales, in respect of their supreme jurisdiction. 2. Generales, in respect of their general jurisdiction throughout all England, &c. 3. Perpetui for that they ought not to be removed without just cause. 4. Majores à latere Regis residentes, for their honour and safety, that they should be protected by the King in administration of justice, for that they be à latere Regis.

And where in 5 E. 4. it is holden by all the Justices in the Exchequer chamber that a man cannot be Justice by Writ but by Patent or Commission, it is to be understood of all the Judges, saving the Chief Justice of this Court. But both the Chief Justice, and the rest of the Judges may be discharged by Writ under the Great Seal.

None can be a Judge of this Court unless he be a Serjeant of the degree of the Coif, and yet in the Writ or Patent to them made: they are not named Serjeants.

See in the Chapter of the Constable and Marshal for this point.

Rot. Par. 25 E. 1. so named in the Writ of Parliament to him directed.

Nota, His fine was levied, *Inter Martinum Abbatem de Missenden querentem, & Thurstanum Basset desorcientem de 3 Carucat<sup>is</sup> terre in lega*, before him in the Kings Bench in 3 H. 3. before Mag. Cart. and stiled *Capit. Justiciar<sup>us</sup> Angliæ Lib. de Missenden*, fol. 109. divers other fines with the same stile.

*a* Regist. fol. 77. 24 E. 1. Stat. de consuetat<sup>ibus</sup>. 3 E. 3.

Coron 361. Lib. Int. Co. tit. *actio sur le cas*. Sec<sup>us</sup>. 5. *b* Aldermanni Judices dicti sunt in diebus illis.

*c* Bract. lib. 3. l. 108.

L. 5 E. 4. 137.



If a Writ be returnable Coram Justiciariis nostris apud Westm', it shall be returned in the Common Pleas: but if it be returnable in this Court, it must be Coram nobis ubicumq; fuerimus in Anglia. See the Second part of the Institutes, Mag. Cart. cap. 11. and the exposition upon the same.

In former times some ill disposed Clerks of this Court, because they could have no original out of the Chancery for debt returnable into this Court, they would sue out an original action of trespass (a mere feigned action) returnable into this Court, and so proceed to Exigent, (where in truth the cause of action is for debt) and when the Defendant appeared, &c. all the former proceedings were waived, and a bill filed for the Defendant for debt. This is an unjust practise in derogation of the dignity and honor of this Court, and worthy of severe punishment according to the Statute of W. 1. c. 29. when it is found out: Vide in the Chapter of the Court of Common Pleas in the end thereof.

Now that we may here say somewhat to a vulgar objection of the multiplication of suits in Law both in this Court, and other of his Majesties Courts at Westm. more then hath been in the Reigns of E. 3. R. 2. H. 4. H. 5. H. 6. E. 4. and R. 3. It is to be observed, that there be six causes of the increase of them, whereof two be general, and the other four particular. The general be Peace, and Plenty: The particular, 1. The dissolution of so many Monasteries, Chanteries, &c. and the dispersing of them into so many several hands. 2. The swarm of Informers. 3. The number of Concealors. 4. The multitude of Attornies.

For the first general: In the Reigns of E. 3. R. 2. H. 4. H. 5. and part of the Reign of H. 6. in respect of the wars in France, &c. and in the residue of the Reign of H. 6. and in the Reign of E. 4. in respect of the bloody and intestine wars, and in almost continual alarms within the bowels of this Kingdom, between the Houses of Lancaster and York, there could not be so many suits in Law, as since this Kingdom hath enjoyed peace, (which is the first general cause) Peace is the mother of Plenty, (which is the second general cause) and Plenty the Nurse of suits. In particular, by the dissolution of Monasteries, Chanteries, &c. and dispersing of them, &c. Upon the Statutes made concerning the same (there being such a confluence of Ecclesiastical possessions) there arose many questions and doubts, whereupon suits were greatly increased. 2. Informers and Relators raised many suits, by Informations, Writs, &c. in the Kings Courts at Westm' upon penal Statutes, many whereof were obsolete, inconvenient, and not fit for those days, and yet remained as snares upon the subject, so as the subject might justly say with Tacitus, Prius vitis laboravimus, nunc legibus. 3. Concealors, Helluones, that endeavoured to swallow up Cathedral Churches, and the Ecclesiastical possessions of Churchmen, and the livings of many others of the Kings subjects. Lastly, The multitude of \* Attornies, more then is limited by Law, is a great cause of increase of suits.

*a* But now on the other side, to shew what great hope there is, that suits in Law shall decrease, for that in effect all the particular causes of the increase of them are taken away, which we have thought good to remember.

*b* For the first, the Statute of 35 Eliz. cap. 3. hath remedied part, but the Statute of 21 Jac. c. 2. hath given a plenary salve for the whole mischief, whereof you may read at large in the Third part of the Institutes, cap. 87. against Concealors, turbidum hominum genus. *c* For the second, By the Statute of 21 Jac. cap. 4. Informations, &c. upon penal Statutes are to be heard and determined in their proper Counties, and not in the Courts at Westminster, whereby the veracious swarm of Informers who are best trusted where they are least known, are vanishes and turned again to their former occupations. *d* Concerning Attornies, the number are set down, and that they ought to be learned and veracious, and as I understand, the Judges at this time have this matter in consideration. But besides these, there are some other Statutes made for avoiding and decreasing of veracious suits. As an Act in 21 Jac. Regis cap. 16. for limitation of actions and avoiding suits in Law, a good and beneficial Law. Another Act at the same Parliament, cap. 13. for the further reformation of Jeofails

W. 1. cap. 29.  
Vid 30 H. 6. 37. a.  
30 E. 3. 32. It is  
fraud where one  
thing is pretended  
and another done.  
Multiplication of  
suits.  
Peace.  
Plenty.  
Dissolution of  
Monasteries, &c.  
Informers.  
Concealors.  
Attornies.

*Silent leges inter  
arma.*

Concordia parvae  
res crescunt, ex  
opulencia lites.

\* See the Pream-  
bles of the Stat.  
4 H. 4. cap. 18.  
33 H. 6. cap. 7.  
*a* Diminution of  
suits.  
*b* Possessions of  
Monast and  
Chanteries, &c.  
35 El. c. 3. 21 Jac.  
cap. 2. Concealors.  
*c* 21 Jac. cap. 4.  
Informers.  
See the 3. part of  
the Inst. cap.  
against vexatious  
relators, Infor-  
mers, &c.  
*d* Attornies Rot.  
Par. 20 E. 1. Rot. 4.  
*De Apprenticiis &  
Attornatis.* 15 R. 2.  
nu. 28. 4 H. 4. c. 18.  
33 H. 6. cap. 7.  
See Rot. Parl.  
13 H. 4. nu. 63.  
not in print.  
21 Jac. cap. 16.

fails, a good Law for ending of suits. Another at the same Parliament, cap. 8. to prevent and punish abuses in procuring of proceſſes of Superſedeas of the peace and good behaviour, out of his Majesties Court at Westminster, &c. whereby infinite vexations, troubles and charges of the subjects are prevented. Another at the same Parliament, ca.23. for avoiding of vexatious delays in causes by removing of actions and suits out of inferior Courts, wherein the former abuse was vexatious, grievous, and chargeable to the Subject. A branch of an Act at the same Parliament, cap. 16. for pleading of tender of amends in an Action of Trespas, Quare clauf. fregit, for a trespass by negligence, or involuntary, wherein the Defendant maketh no title, &c. an excellent and necessary Law for avoiding of trifling and vexatious suits, especially in Champion Countries. An Act at the same Parliament, ca.2. against Monopolies and new projects, &c. a great quiet for the time to come. Anno 3 Caroli Regis nunc, cap. 1. The petition of Right concerning the rights and liberties of all the subjects of this Realm for their repose and quiet. Lastly, the repeal of so many obsolete penal Statutes is a great mean of diminution of suits.

See the 3 part of  
the Inst. cap.  
against Monopolists  
and Projectors  
3 Car. Regis c.1.  
21 Jac. ca.28.  
3 Car. ca.4.

For the abovesaid general causes, viz. Peace and Plenty, long may they happily by the goodness of God continue without abuse within this Realm.

The Kings Bench hath authority for great misprisions and offences, to adjudge and indict corporal punishment, as Pillory, Pipers, and the like: whereof you may read many presidents in the Third part of the Institutes, pag. 219, 220.



## CAP. VIII.

*The Court of Chancery.*

¶ *The Antiquity of this Court.*  
26 E.3. ass. p. 24.  
and the Preface to  
the third book of  
Reports.  
History of Ely,  
Hugo Petrobrugen-  
sis, Leland.  
Fortesc. cap. 17.

In the second book  
of the History of  
Ely, written in the  
Reign of King Ste-  
phen soon after  
the Conquest.  
\* Curia Canc.  
Nota.

Mirror ca. 1. §. 3.  
& vide ca. 5. §.  
*par le enroulments  
de pardon le Roy in  
le Chancery en temps  
le Roy Alfred.* King  
Alfred began to  
reign anno Dom.  
872. and was Fa-  
ther to King Ed-  
ward Senior Fa-  
ther of the said  
Athelstane.  
\* Error Polydori.

Firzh. Stephen  
tempore H. 2. in the  
end of Stows sur-  
vey of Lond.  
Brañton fo.  
See Glanv. li. 12.  
ca. 1. & 5. &c.  
Fleta li. 2. ca. 12.

W. 2. 13 E. 1. c. 1.  
13 E. 1. ca. 23, 24.

**C**ertain it is, that both the Brittish and Saxon Kings had their Chancellors and Court of Chancery, the only Court out of which original Writs do issue: As taking some few examples before the Conquest.

Edward the Confessor had Reinbald his Chancellor. This Edward granted many Mannors, Lands, &c. and Franchises to the Abbot of Westminster, and endeth his Charter thus. Ad ultimum, cartam istam sigillari iussi, & ipse manu mea propria signum Crucis impressi, & idoneos testes annotari præcepi: and amongst those witnesses this you shall find, Swardus notarius ad vicem Reinbaldi regis dignitatis Cancellarii hanc cartam scripsi & subscripsi. He had also Lefrick to his Chancellor.

King Etheldred also had a worthy name, and a worthy man to his Chancellor. Rex Etheldredus statuit atque concessit quatenus Ecclesiam de Elye ex tunc & semper in regis \* curia Cancellariæ ageret dignitatem, &c. This King began his reign, Anno domini 978. which albeit it was void in Law to grant the Chancellorship of England in succession, yet it proveth that then there was a Court of Chancery.

King Edgar had Adulph: King Edred had Thurkettle: King Edmond the same: King Athelstane Wolline, their Chancellors, &c.

For further proof that there was a Court of Chancery before all these Kings time, out of which Writs remedial issued, as they do to this day: hear what the Mirror saith, Le primer constitutions ordenus per les viels roys, &c. ordeine fuit que chescun eut del' Chancery le Roy brief remedial a son plaint sans difficulte. Whereby it appeareth that in the Reign of King Alfred there was a Court of Chancery out of which Writs remedial issued, which was not then instituted, but affirmed to be a Court then in esse, and enacted that out of that Court Writs remedial should be granted without difficulty, which Law continueth to this day. And thus much touching the Court of Chancery before the Conquest: and therefore \* Polydor Virgil, who affirmeth this Court to come in with the Conqueror, perperam erravit.

In a Charter to the Abbot of Westminster by William the Conqueror, and amongst the witnesses it is written thus, Ego Mauritius regis Cancellarius favendo legi, & sigillavi. Arfastus Bishop of Northelmham in Norff. who translated his See to Thetford, was also Chancellor to the Conqueror.

Cancellarii Angliæ dignitas est, ut secundus à rege in regno habeatur, ut altera parte sigilli regii, quod & ad ejus pertinet custodiam, propria signet mandata, &c.

Omnia brevía de pace, &c. irrotulari debent in rotulo Cancellariæ.

Fleta saith, Est inter cætera quoddam officium quod dicitur Cancellaria, quod uno provido & discreto, ut Episcopo vel clerico, magnæ dignitatis debet committi simul cum cura magni sigilli regni, cujus substituti sunt Cancellar' omnes in Anglia, Hibernia, Wallia, & Scot' omnesque sigilla regis custodientes ubique præter custodem sigilli privati. Cui associantur clerici honesti, circumspecti domino regi jurati, qui in legibus & consuetudinibus Anglicanis notitiam habeant pleniorē, quorum officium sit supplicationes & querelas conquerentium audire & examinare, & eis super qualitatibus injuriarum ostensarum debitum remedium exhibere per brevía regis.

Breve de forma donationis in revertere satis est in usu in Cancellaria.  
In Cancellaria & in registro Cancellariæ.



For the antiquity and authority of this book of the Register of the Chancery, see the first part of the Institutes, Verb. per le Register, and in the Epistle to the ninth book of my Commentaries.

But to proceed (omitting many others) Robert Parning took the state and degree of a Serjeant at Law in 3 E.3. and became the Kings Serjeant, and for his profound and excellent knowledge of the Laws, in Trin. Term 14 E.3. was 24. Julii by Writ created Chief Justice of England: in which office he remained until the 15 of December following, on which day he was made Lord Treasurer of England. In that office he remained until the 15 year of the reign of the same King, and then was constituted Lord Chancellor. This man knowing that he that knew not the Common Law could never well judge in equity (which is a just correction of Law in some cases) did usually sit in the Court of Common Pleas, (which Court is the Lock and Key of the Common Law) and heard matters in Law there debated, and many times would argue himself, as in the report of 17 E.3. it appears.

In the 30 year of E.3. Sir Robert Thorpe Chief Justice of the Common Pleas (not Sir William Thorpe Chief Justice of England, convicted of sordid bribery) a man of singular judgment in the Laws of this Realm, was constituted Lord Chancellor of England. And in the Parliament Anno 45 E.3. a grievous complaint was made by the Lords and Commons, that the Realm had been of long time governed by men of the Church in disherison of the Crown, and desired that Lay men only be principal Officers, &c.

After the decease of Sir Robert Thorpe 5 Julii Anno 46 E.3. Sir John Kni- vet Knight, Chief Justice of England, a man famous in his profession, was made Lord Chancellor of England, who deceased in Anno 50 E.3. &c.

In perusing the Rolls of Parliament in the times of these Lord Chancellors, we find no complaint at all of any proceeding before them. But soon after, when a Chancellor was no professor of the Law, we find a grievous complaint by the whole body of the Realm, and a Petition that the most wise and able men within the Realm might be chosen Chancellors, and that he seek to redress the enormities of the Chancery. But leaving many other Records to their proper places hereafter, we will conclude this point concerning the antiquity and jurisdiction of this Court with the opinion of all the Judges of the Realm in 9 E.4. in a suit in the Court of Exchequer against the Clerk of the Hamper in the Chancery upon his account in the Exchequer, where it was holden by all the Justices in the Exchequer Chamber, that all the Courts of the King have been time out of memory, so as a man cannot know which of them is the ancientest Court. And Justice Yong the plaintiff demanded of the Justices, what if the Chancellor command me upon a pain, that I shall not sue him? To whom Billing the Chief Justice answered, You are not bound to obey it, because that commandment is against Law: But seeing that toucheth upon the Jurisdiction of the Court, let us in the next place handle that point.

### The Jurisdiction of the Court.

In the Chancery are two Courts, one ordinary, Coram Domino Rege in Cancellaria, a wherein the Lord Chancellor or Lord Keeper of the Great Seal proceeds according to the right line of the Laws and Statutes of the Realm, secundum legem & consuetudinem Angliæ. b Another extraordinary according to the rule of equity, secundum æquum & bonum. And first of the former Court.

c He hath power to hold plea of Scire fac' for repeal of the Kings Letters Patents, of Petitions, monstrans de droits, traverses of Offices, Partitions in Chancery, of Scire fac' upon recognisances in this Court, Writs of Audita querela, and Scire fac' in the nature of an Audita querela to avoid executions in this Court; Adowments in Chancery, the Writ de dote assignanda upon offices found, execution upon the Statute staple, or recognisance in nature of a Statute staple upon the Act of 23 H.8. but the execution upon a Statute merchant is returnable either into the Kings Bench, or into the Common pleas, and all

1 part Instit.  
Sect. 101. Epist.  
lib 9.

Vid. postea ca. 10.  
of the Court of  
Common Pleas.

Ubi non est scien-  
tia, non est consci-  
entia.  
17 E.3. fo. 11. 14.  
23 27.

Rot. Parl. 45 E.3.  
Rot. 22. nu. 15.

Rot Par. 5 R.2.  
nu. 20.

a 8 E.4. 5. 9 E.4. 15  
14 E.4. 7.  
b Stan. p. 127. c. 20.  
fo 55.  
Pl com fo 72.

c Rot. Parl. 8 H. 4.  
nu. 122. 2 R. 3. 10.

d Regist 297.  
F N B 263.  
Stanf prær ca.  
Rot. Parl. 18 E. 3.  
nu. 41, 42.



a 13 E.2. coram  
Rege. Rot. 51.  
London.

b 10 E. 3. 61.  
24 E. 3. 65. 73.

c 18 E. 3. 25. 17.  
all. 24.  
14 Eliz. Dier 315.  
Pl. com. 393. a.  
d In Par. Tr. 9 H. 6.  
Rot. 5. Int. placita  
regis.

*Officina Justitiæ*

Fleta lib. 2. ca. 12.  
Braet. li. 5. fo. 413.  
Britton ca. 84.  
Fleta lib. 6. ca. 35,  
& 36.

personal actions by or against any Officer or Minister of this Court in respect of their service or attendance there. *a* In these if the parties descend to issue, this Court cannot try it by Jury, but the Lord Chancellor or Lord Keeper delivereth the Record by his proper hands into the Kings Bench to be tried there; because for that purpose both Courts are accounted *b* but one, and after trial had to be remanded into the Chancery, and there Judgment to be given. But if there be a demurrer in Law, it shall be argued and adjudged in this Court. Nota, the legal proceedings of this Court be not inrolled in Rolls, but remain in filaciis, being filed up in the Office of the Pety-bag. *c* Upon a Judgment given in this Court a Writ of Error doth lye retournable into the Kings Bench: *d* The stile of the Court of the Kings Bench is coram rege (as hath been said) and the stile of this Court of Chancery is coram domino rege in Cancellaria, & additio probat minoritatem. And in this Court the Lord Chancellor or the Lord Keeper is the sole Judge: and in the Kings Bench there are four Judges at the least.

This Court is Officina Justitiæ, out of which all original Writs and all Commissions which pass under the Great Seal go forth, which Great Seal is Clavis regni, and for those ends this Court is ever open.

Of this Court Fleta ubi supra saith, Dicuntur Brevia cum sint formata ad similitudinem regulæ juris, quæ breviter, & paucis verbis intentionem proferentis exponunt, sicut regula juris, rem quæ est breviter enarrat: non tamen ita debet esse brevis quin rationem & vim intentionis contineat. Et sunt quædam Brevia formata sub suis casibus, & quædam de cursu quæ consilio totius regni sunt approbata, quæ quidem mutari non poterunt absque eorundem contraria voluntate. Sunt & Brevia ex eis sequentia quæ dicuntur judicialia, & sæpius variantur secundum varietatem placitorum proponent' & respondent', petentis & excipientis & secundum varietatem responsionum. Sunt & quædam quæ dicuntur magistralia & sæpius variantur secundum diversitatem casuum, factorum & querelarum, & quorum quædam sunt personalia, & quædam realia, & quædam mixta, secundum quod sunt actiones diversæ vel variæ, quia tot erunt formulæ brevium, quot sunt genera actionum, quia non potest quis sine brevi agere, præcipue de libero tenemento suo, quia non tenetur quis respondere sine brevi, nisi gratis voluerit, & cum hoc fecerit quis, ex hoc ei non injurabitur: volenti enim & scienti non fit injuria. De eadem autem re, plures alicui competere poterunt actiones, ordine autem, ut convenit, observato. Breve quidem regis in se nullam debet continere falsitatem, nec aliquem errorem: apparere debet vel in prima sui figura non vitiosum, maxime si fuerit patens sive apertum, quia originalia quædam sunt clausa, & quædam aperta. Et sive aperta, sive clausa, apparere non debent abrasa, nec abolita: & si inveniatur abrasio, tunc refert quo loco, à quo, & quando. Quo loco? videlicet utrum in narratione facti vel juris. Si autem in narratione facti, cadet coram Just' quasi suspectum. Facta enim & nomina mutari non debent, sed jura ubique scribi possunt. A quo? utrum videlicet per Clericum Cancellar' cui autoritas data fuerit, vel ausu temerario per alium sicut Clericum Justic', vel Vic' ad procuracionem alicujus partis: quo casu omnes agentes & consentientes tanquam falsarii puniantur. Item quando? videlicet utrum hoc fiat antequam bre in curia resuscitatum & publicatum, vel post. Si autem post, erit breve suspectum & cadet, si a tenente fuerit hoc calumpniatum. Fiunt autem brevia judicialia in Cancellaria ex recognitionibus & contractibus habitis & in Rotulis Cancellariæ irrotulatis & ex recordo Cancellario & Clericis sibi associatis per hanc constitutionem concessio. Quia de hiis quæ recordata sunt coram Cancellar' Domini Regis, & ejus Justic' qui recordum habent & in rotulis eorum irrotulantur, non debet fieri processus placiti per summonitionem, vel attachiament', effonia, visus t're & alias solemnitates Cur' sicut fieri consuevit ex contractibus, & conventionibus factis extra curiam. Observandum est de cætero quod ea quæ inveniuntur irrotulata coram hiis qui recordum habent vel in finibus contenta, cum sint contractus sive conventiones vel obligationes sive servicia aut consuetudines recognite sive alia quæcunq; irrotulata quibus Cur' regis sine juris & constitutionis offensa auctoritatem præstare potest, talem de cætero habeat vigorem, quod non

fit



fit necesse de hiis placitare in posterum, sed cum venerit querens ad Curiam Domini Regis, si recens sit cognitio, vel finis, viz. infra annum per bre levatus, statim habeat bre de executione illius recognitionis factæ: & si forte à majore tempore transacto facta fuerit illa recognitio, vel finis levatus; præcipiatur Vic' quod scire fac' parti de qua fit querimonia, quod sit ad certum diem, ostens. si quid sciat dicere quare hujus irrotulata vel in fine contenta executionem habere non debeant. Et si ad diem venerit, & nihil sciat dicere quare executio fieri non debeat, præcipiatur Vic' quod rem irrotulatam vel in fine contentam exequi fac'. Eodem modo mandetur ordinario in suo casu, observato nihilominus quod inferius dicitur in statuto de medio qui per judicium aut recognitionem est obligatus. Ex hac quidem constitutione oriuntur bria judicialia in Cancellaria sicut coram ipsis Justic. Ipsi autem collaterales & focii Cancellarii esse dicuntur præceptores, eo quod bria caulis examinatis remedialia fieri præcipiunt, & hoc quoque cum fine denar' ad opus Domini Regis, & quoque sine fine, eo quod omnia bria non sunt omni tempore æquipollentia. De brevibus autem coram Justic' ad primas Assisas cum in partes illas venerint, fines capere non consueverunt, eo quod ad tempus itineris Justic', ligat constitutio Magnæ Cartæ quæ talis est; *Nulli justitiam negabimus, vendemus, vel differemus*: sed non inhibetur quin fines capiantur pro brevibus possessionum, & actionum personalium, pro celeriore Justitia habenda; qui quidem pro qualitatibus & quantitativis portionem concessi in eisdem brevibus imbreviabuntur, & in rotulis Cancellariæ irrotulantur. Qui quidem rotuli singulis annis ad Scaccar' liberabuntur, & fines hujus extrahantur & per summon' Scaccarii leventur. Clausula vero finis talis est, *Et cape securitatem a prefato tali de 40 solid. ad opus nostrum pro hoc brevi*. Verba autem extract' de Scaccario sunt hæc. *De A. de B. pro brevi habend', dim' mar' vel amplius prout finis factus fuerit*. Conceduntur aliquando conquerentibus ob favorem paupertatis quod ubi præsumi potest sic quod plegios invenire non possunt de prosequend' clamorem suum quod securitatem præstent Vic' per fidei interpositionem suam, non tamen in actionibus personalibus hoc concedendum est. Habet & Rex Clericos in officio illo expertos & legales qui formulas brevium cognoscunt, qui approbando admittunt & defectiva omnino repellunt, quibus omnia bria priusquam ad sigillum proveniunt cum deliberatione distincte & aperte in ratione, dictione, litera & syllaba examinare injunctum est. Et sciendum quod nullum bre nisi per manus eorundem ad sigillum debet admitti. Habet etiam sex Clericos suos prænotarios in officio illo, qui cum Clericis memoratis familiares, &c. esse consueverunt & præcipue ad victum & vestitum qui ad bria scribenda secundum diversitates querelarum sunt intitulati. Et qui omnes pro victu & vestitu de proficuo sigilli in cujuscunque usus pervenerit debent honeste inveniri. Sunt etiam nihilominus Clerici juvenes & pedites quibus de gratia Cancellar' concessum est pro expeditione populi bria facere cursoria, dum tamen sub advocacione Clericorum superiorum fuerint qui eorum facta in eorum receperint pericula. Et in quolibet bri debet scribentis nomen inbreviari qui warrantizare poterint in peccatores si necesse fuerit. Et ne præfati Clerici superflua petant stipendia pro scriptura sua, constitutum est quod tam Clerici Justic' quam Cancellar' de solo denario pro scriptura unius brevis se teneant contentos.

And this Court is the rather always open, for that if a man be wrongfully imprisoned in the Vacation, the Lord Chancellor may grant a Habeas corpus and do him Justice according to Law, where neither the Kings Bench nor Common Pleas can grant that Writ but in the Term time; but this Court may grant it either in Term time or vacation. So likewise this Court may grant Prohibitions at any time either in Term or Vacation: which Writs of Prohibition are not returnable: but if they be not obeyed, then may this Court grant an Attachment upon the prohibition returnable either in the Kings Bench or Common Pleas.

The Author of that Book speaking of the Court of Chancery, and of the jurisdiction it then had, saith, Curia Cancellariæ Regiæ est Curia ordinaria pro brevibus originalibus emanandis, sed non placitis communibus tenendis.

Divers Acts of Parliament give authority to the Lord Chancellor to hear and

New Tales, or  
Novæ Narrationes,  
written about the  
beginning of E. 3<sup>d</sup>



27 E. 3. cap. 13.  
2 R. 3. f. 3. 13 E. 4.  
Dier 12 El. 228.  
a. resolve.

¶ Officers and Ministers of this Court.

See the 2. part of the Instit. W. 2. c. 24. Verbo. Clerici de Cancellaria.

\* In the Parliament Roll of 5 R. 2. nu. 23. they are called chief Clerks

and determine divers offences and causes in the Court of Chancery, which is ever intended in this Court proceeding in Latin, secundum legem & consuetudinem Angliæ, and the Defendant shall not be sworn to his answer, nor examined upon Interrogatories, and upon issue joyned it shall be tried in the Kings Bench, Ut in similibus casibus solet. But our purpose is not to enumerate all these Statutes, for our aim is principally at the general jurisdiction of this Court.

The Officers and Ministers of this Court of Common Law do principally attend and do their service to the Great Seal, as the \* twelve Masters of the Chancery, whereof the Master of the Rolls is the chief, who by their original institution, as it is proved before, should be expert in the Common Law, to see the forming and framing of original Writs according to Law, which are not of course; whereupon such are called in our ancient Authors Brevia Magistralia. The Clerk of the Crown, the Clerk of the Hamper, the Sealer, the Chase war, the Controller of the Chancery, twenty four Cursitors for making Writs of course or formed Writs according to the Register of the Chancery, the Clerk of the presentations, the Clerk of the Faculties, the Clerk examiner of Letters Patents, the Clerks of the Pettibag, and the six Attornies. The process in this Court is under the Great Seal according to the course of the Common Law.

Having spoken of the Court of ordinary jurisdiction, it followeth according to our former division, that we speak of the extraordinary proceeding according to the rule of equity, secundum æquum & bonum, wherein we will pursue our former order.

¶ Of the Antiquity of this Court of Equity.

Henry Beaufort son of John of Gaunt Bishop of Winch. Cardinal of St. Eusebius, Lord Chancellor in the beginning of the Reign of H. 6. and in that Kings Reign John Kemp Cardinal of S. Rufeline Archbishop of York, Lord Chancellor. See Rot. Parl. 28 H. 6. nu. 10. & 35 H. 6. fol. 3. 4 36 E. 3. cap. 9.

Albeit our ancient Authors, the Mirror, Glanvill, Bracton, Britton and Fleta, do treat of the former Court in Chancery, and of original Writs and Commissions issuing out of the same, yet none of them do once mention this Court of Equity. We have also considered what cases in this Court of Equity have been reported in our books, and we find none before the Reign of H. 6. and in that Kings time, and afterwards plentifully, we then turned our eyes to Acts of Parliaments and Parliament Rolls.

a Some have thought that the Statute of 36 E. 3. gave the Chancellor his first authority for his proceeding in course of equity, by which it is enacted, That if any man think himself grieved contrary to any of the Articles above written, or others contained in divers Statutes, will come to the Chancery or any for him, and thereof make his complaint, he shall presently have there remedy by force of the said Articles and Statutes, without elsewhere pursuing to have remedy. But certainly this Act giveth the Chancellor no power to proceed in course of equity, but that he grant to the party grieved original Writs which are called remedial grounded upon any Statute for his relief, and there is no Statute that gives the party grieved remedy in equity. Lastly, the last words of the Act, without elsewhere pursuing to have remedy, do manifest that the meaning of the makers of the Act is to direct the party to be relieved by the Common Law, by actions upon these Statutes, and not elsewhere.

Rot. Parl. 13 R. 2. nu. 30.

In the Parliament holden 13 R. 2. the Commons petitioned to the King, That neither the Chancellor nor other Counsellor do make any order against the Common Law, nor that any Judgment be given without due process of Law. Whereunto the Kings answer was, The usages heretofore shall stand, so as the Kings royalty be saved. In the same Parliament another petition was, That no person should appear upon a Writ *De quibusdam certis de causis*, before the Chancellor or any other of the Council, where recovery is therefore given by the Common Law: Whereunto the Kings answer is, The King willeth as his Progenitors have done, saving his regality.

17 R. 2. cap. 6.

In the Parliament holden in 17 R. 2. it is enacted at petition of the Commons, That forasmuch as people was compelled to come before the Kings Council, or in Chancery, by Writs grounded upon untrue suggestions, that the Chancellor for the time being presently after that such suggestions be duly found and proved untrue, shall have power to ordain and award damages according to his



his discretion to him which is so travelled unduly, as is aforesaid. This Act extendeth to the Chancelor proceeding in course of equity, and extendeth not to a demurrer in Law upon a bill, but upon hearing of the cause upon these words in the Act [ duly found and proved: ] and this is the first Parliament that I find touching this matter. And in the Roll of the same Parliament, I find the first decree in Chancery that ever I observed, the effect whereof was: John de Windfor complaineth and requireth to be restored to the manors of Rampton, Cottenham and Westwick with their appurtenances in the County of Cambridge, the which were adjudged to him by the Kings award, then in the possession of Sir John Lisley, and now withhelden by Sir Richard le Scroope, who by Champerty bought the same: the cause was this. Upon a petition of Windfor against Lisley, they both compromitted the matter to the Kings order, the King committed the same to the Council, they after digesting of the same made a decree for Windfor under the Privy Seal, they send warrant to the Chancelor to confirm the same, which was done under the Great Seal by a special Injunction to Lisley, and to write to the Sherifff to execute the same. After this, Lisley by petition to the King requireth that the same may be determined at the Common Law, notwithstanding any former matter: the King accordingly by Privy Seal giveth warrant to the Chancelor to make a Superfedeas, the which was done by Privy Seal, after which Sir Ric. le Scroope bought the same. Upon the ripping of the whole matter, this sale was thought no Champerty, whereupon it was adjudged, that the said Windfor should take nothing by his said suit, but to stand to the Common Law, and that the said Sir Richard should go without day.

7 E. 4. fol. 14.

Rot. Par. 17 R. 2.  
nu 10. William  
Courtney son of  
Hugh Earl of De-  
von, was then Bi-  
shop of Cant. and  
Lord Chancelor  
when this decree  
was made.

Champerty.

The Commons petitioned that no Writs or Privy Seals be sued out of the Chancery, Exchequer or other places to any man to appear at a day upon a pain, either before the King and his Council, or in any other place, contrary to the ordinary course of the Common Law: whereunto the King answered: That such writs should not be granted without necessity.

Rot. Par. 2 H. 4.  
nu. 69.

Amongst the petitions of the Commons you shall find this, That all Writs of Subpoena and Certis de causis, going out of the Chancery and the Exchequer, may be enrolled, and not granted of matters determinable at the Common Law, on pain that the Plaintiff do pay by way of debt to the Defendant forty pound: whereunto is answered, The King will be advised.

Rot. Par. 3 H. 5.  
nu. 45  
Edmond I. Son of  
Archb. Cantuar.  
was Lord Chancelor  
at this time.

It is enacted, to endure until the next Parliament, that the exception ( how that the party hath sufficient remedy at the Common Law ) shall discharge any matter in Chancery. At the next Parliament you shall find a petition in these words. No man to be called by Privy Seal or Subpoena to answer any matters but such as have no remedy by the Common Law, and that to appear so by the testimony of two Justices of either Bench, and by Indenture between them and the Plaintiff, which Plaintiff shall always appear in proper person, and find surety by recognizance to prosecute with effect the matters of the Will only, and to answer damages if the same fall out against the Plaintiff.

Rot. Par. 3 H. 5.  
nu. 25.  
Rot. Par. 1 H. 6.  
nu. 41.

But in An. 15 H. 6. for a perpetual Law, and for the true jurisdiction of this Court it is enacted in these words.

Never good Peti-  
tion in Parliament  
dieth, but first or  
last will take effect  
Vid. sup. pag. 32.  
15 H. 6. cap. 4.

Item, Forasmuch as divers persons have before this time been greatly grieved by Writs of Subpoena, purchased for matters determinable by the Common Law of this land, to the great damage of such persons so vexed, in subversion, and impediment of the Common Law aforesaid; Our Sovereign Lord the King will, that the Statutes thereof made shall be kept after the form and effect of the same. And that no Writ of Subpoena be granted from henceforth till surety be found to satisfy the party so grieved and vexed for his damages and expences, if so be that the matter may not be made good, which is contained in the bill. In Anno 31 H. 6. cap. 2. There is a Proviso in these words. Provided that no matter determinable by the Law of this Realm

39 H. 6. fol. 26.  
4 E. 4. 8. 14 E. 4. 1.  
16 E. 4. 9. b.  
18 E. 4. 13. 6 E. 4.  
10. b. 7 H. 1.  
Forf. cap. 34.  
Rot. Par. 1 H. 4.  
nu. 5. William  
Sherborne was  
Doct. & Stud.  
cap. 18. 24. 50.  
31 H. 6. cap. 2.



Realm shall be by the said Act determined in other form then after the course of the same Law in the Kings Courts having determination of the same Law.

Trin. 2 Jac.

Tr. 2 Jac. Regis, upon suit made to the King for erecting of a new office for taking of surety according to the said Act of 15 H.6. c.4. the King referred the cause to Popham Chief Justice, who upon conference with the Judges in Fleet-street, resolved that the surety was by force of that Act to be by obligation, and to be made by the party grieved himself, because it concerneth his damages and costs, and the Court was to set down the form and sum of the obligation, and in the end the suit prevailed not.

\* Pasch. 29 El. in Scaccario Woods case.

Vide 7 El. Dier

238. Seignior

Shandois case.

¶ Reasons: 1. A

majori ad minus.

Rot.Par. 2 R. 2. n. 18

† Pasch. 29 Eliz. in Scaccario, In Woods case adjudged upon the Statute of 2 E.6. c.13. for the like reason, that the forfeiture for non-payment of Witches shall go to the party grieved.

1 Rot. Par. 2 R.2. nu.18. The high Court of Parliament relieveth but such as cannot have remedy but in Parliament.

Rot Par. 13 R.2. nu. 10.

The Parliament for matters determinable at the Common Law doth remit the parties thereunto.

2. Regula.

2. Nunquam decurritur ad extraordinarium, sed ubi deficit ordinarium.

3.

3. Whereas matters of fact by the Common Law are triable by a Jury of twelve men, this Court should draw the matter ad aliud examen, that is, to judge upon deposition of witnesses, which should be but evidence to a Jury in actions real, personal, or mixt.

3. H. 6. 14.

27. H. 8. 18.

This Court of Equity proceeding by English Will is no Court of Record, and therefore it can bind but the person only, and neither the estate of the Defendants lands, nor property of his goods or chattels.

Trin. 3 Jac. Reg. in Scaccario. Sir Thomas Themilthorps case.

Egerton Lord Chancellor imposed a fine upon Sir Tho. Themilthorp Knight, for not performing his decree in Chancery concerning Lands of inheritance, and estreated the same into the Exchequer: and upon process the party appearing pleaded that the fine was imposed by the Lord Chancellor for not performance of his decree, and that he had no power to assess the same. The Attorney General confessed the plea to be true, & petit advisamentum Curie, concerning the power of the Chancellor in this case: and upon debate of the question in Court, and good advisement taken, it was adjudged that the Lord Chancellor had no power to assess any such fine, for then by a mean he might bind the interest of the land where he had no power, but of the person only, and thereupon the said Sir Thomas Themilthorp was discharged of the said fine.

Walters case.

Afterward the said Lord Chancellor decreed against Waller certain lands, and for not performance of the decree imposed a fine upon him, and upon process out of the Court of Chancery extended the lands that Waller had in Midd. &c. whereupon Waller brought his Assise in the Court of Common pleas, where the opinion of the whole Court agreed in omnibus, with the Court of Exchequer.

¶ The Judge of this Court of Equity, &c.

The Lord Chancellor or the Lord Keeper is sole Judge both in this Court of Equity, and in the Court concerning the Common Law; but in cases of weight or difficulty he doth assist himself with some of the Judges of the Realm, and no greater exception can be taken hereunto then in case of the Lord Steward of England being sole Judge in trial of the Nobility, who also is assisted with some of the Judges.

For this Court of Equity the ancient rule is good. Three things are to be judged in Court of Conscience: Covin, Accident, and breach of confidence.

All covins, frauds, and deceits, for the which is no remedy by the ordinary course of Law.

Accident, As when a servant, an Obligor, Mortgagee, &c. is sent to pay the money on the day, and he is robbed, &c. remedy is to be had in this Court against the forfeiture, and so in the like.

The third is breach of trust and confidence, whereof you have plentiful authorities in our books.

The



The case in the Chancery between the Earl of Worcester and others Plaintiff, and Sir Moyl Finch and Eliz. his wife Defendants, was this, The Queen being seised of the Mannor of Raveston and of certain Lands in Stokegoldington, (which the Plaintiff pretended to be a Mannor either in right or reputation) granted by her Letters Patents the Mannors of Raveston and Stokegoldington to the said Sir Moyl and John Awdelye, and their heirs: but this was upon confidence, that they should grant the Mannor of Raveston to Sir Thomas Heneage and Anne his Wife, and to the heirs of Anne: and the Mannor of Stokegoldington to Sir Thomas and Anne, and the heirs of Sir Thomas. Sir Moyl and Awdelye by deed indented and inrolled Termino Trin. 1588. 30 Eliz. in this Court for a thousand pound bargained and sold to Sir Thomas Heneage and his Wife the Mannors of Raveston and Stokegoldington, and the Site of the Priory of Raveston in the County of Buck. and all other their Lands, Tenements and Hereditaments in Raveston, Weston, Pedington, and Stokegoldington in the County of Buck. To have and to hold the Mannor of Raveston and the Site of the said Priory, and in all the premises in Raveston, Weston, Pedington, and Stokegoldington (other then the said Mannor of Stokegoldington) to the said Sir Thomas and Dame Anne, and the heirs of the said Dame Anne: and to have and to hold the said Mannor of Stokegold. to the said Sir Thomas and Dame Anne, and to the heirs of Sir Thomas. Sir Thomas had issue by the said Dame Anne the said Elizabeth one of the Defendants his only child, and afterwards the said Dame Anne died: the Defendant alleged that Sir Thomas was disseised of Stokegoldington, and the Plaintiff denied it. And after Sir Thomas by deed indented and inrolled, bargained and sold the Mannor of Stokegoldington to the Plaintiff for payment of his debts and died: and for payment of his debts, they exhibited their Will against Sir Moyl, and the said Elizabeth his wife, for the said Mannor of Stokegoldington, and the Lord Chancellor decreed it for the Plaintiff. And upon a Petition preferred by the Defendants to Queen Elizabeth, she referred the consideration of the whole case to all the Judges of England: and after hearing of the Counsel of both parts on several days, and conference between themselves, these points for rule in equity were resolved. First, that if there were any disseison, that nothing passed to the Plaintiff either in right or equity, for the disseisor was subject to no trust, nor any Subpoena was maintainable against him, not only because he was in the post, but because the right of inheritance or freehold was determinable at the Common Law, and not in the Chancery, neither had Cestui que use (while he had his being) any remedy in that case. Secondly, it was resolved by all the Justices, that admitting that Sir Thomas Heneage had a trust, yet could not he assign the same over to the Plaintiff, because it was a matter in privity between them, and was in nature of a chose in action, for he had no power of the Land, but only to seek remedy by Subpoena, and not like to cestui que use, for thereof there should be possessio fratris, and he should be sworn on Juries in respect of the use, and he had power over the Land by the Statute of 1 R.3. ca. and if a bare trust and confidence might be assigned over, great inconvenience might thereof follow by granting of the same to great men, &c. Thirdly, when the Land descended to Elizabeth one of the Defendants, as heir to her mother, and the trust descended to her from her father, the trust was drowned and extinguished. Fourthly, when any title of freehold or other matter determinable by the Common Law come incidently in question in this Court, the same cannot be decided in Chancery, but ought to be referred to the trial of the Common Law where the party grieved may be relieved by error, attain, or by action of higher nature. And when the suit is for evidences, the certainty whereof the Plaintiff surmiseth he knoweth not, and without them he supposeth that he cannot sue at the Common Law: It was resolved that if the Defendant make no title to the Land, then the Court hath full jurisdiction to proceed for the evidence; but if he make title to the land by his answer, then the Plaintiff ought not to proceed, for otherwise by such a surmise, inheritances, freeholds, and matters determinable

Mich. 42 & 43 El.  
in Cancellar. Sir  
Moyl Finches case

A Disseisor subject  
to no trust.

A trust cannot be  
assigned over.  
22 El. Dier fo: 369.  
pl. 50.

Matters determin-  
able by the Com-  
mon Law cannot  
be decided in  
Chancery.  
Suit for Evidence.



by the Common Law shall be decided in Chancery in this Court of Equity. And thus were these points resolved by Sir John Popham, Sir Edmond Anderfon, Sir William Periam, and Walmeslye, Gawdye, Fenner, and Kingesmill Justices, and Clarke and Savill Barons of the Exchequer, and all this amongst other things they certified under their hands into the Chancery, and thereupon the former decree was reversed. And in debating of this case it was resolved by the two Chief Justices, Chief Baron, and divers other Justices, that if a man make a conveyance, and express an use, the party himself or his heirs shall not be received to aver a secret trust, other then the express limitation of the use, unless such trust or confidence do appear in writing, or otherwise declared by some apparent matter. And Popham said, that covin accident, and breach of confidence were within the proper Jurisdiction of this Court.

Mich. 39 & 40 El.  
in Cancellar'.

Thomas Throgmorton Esquire exhibited a Bill in this Court against Sir Moyl Finch Knight, claiming a Lease of the Mannors of R. and S. for many years to come, and shew clear matter in equity to be relieved against a forfeiture pretended to by Sir Moyle for breach of a condition where there was no default in the Plaintiff, &c. Unto which Bill the Defendant pleaded this plea, that for the trial of the forfeiture of which Lease, he made a Lease for years to one privileged in Exchequer, who brought an Ejectione firmæ against the Plaintiff, and upon pleading a demurrer in Law, the Lessee had Judgment to recover against Thomas Throgmorton (now Plaintiff in Chancery:) whereupon Thomas Throckmorton brought a Writ of Error in the Exchequer Chamber, where upon due proceeding the judgment was affirmed, and demanded judgment, if after these judgments given at the Common Law he ought to be drawn to make any further answer in this Court of Equity. And Egerton Lord Chancellor delibered his opinion in Court, that the Defendant should answer to the bill: and forasmuch as the case was of great consequence, the consideration of the demurrer was by the Queen referred to all the Judges of England: before whom the Counsel of Throckmorton said, that the intent of the Lord Chancellor was not to impeach the said judgments, but confessing the said judgments, to be relieved upon matter in equity; As if a man hath (as he is advised) two matters to aid him, matter at the Common Law, and matter in Equity, and being impleaded at the Common Law, doth by advice of all his counsel assaye the Common Law where his adversary prevaileth against him, and hath judgment accordingly, yet in this case the party may, confessing the judgment, sue to be relieved upon a collateral matter in Equity: and thereupon they shewed some presidents in time of H.8.E.6.&c. and one in the point between Ward and Fulwood. But upon great deliberation it was resolved by all the Judges of England, that the plea of Sir Moyl Finch was good, and that the Lord Chancellor ought not to examine the matter in Equity after the Judgment at the Common Law: for though the Lord Chancellor (as hath been said) would not examine the judgment, yet he would by his decree take away the effect of the judgment: and for the presidents, they were grounded upon the sole opinion of the Lord Chancellor, and passed sub silentio. But that such a course should be permitted, it should be not only full of inconvenience, but directly against the Laws and Statutes of the Realm, against which no president or prescription can prevail; \* which you may read at large in the Third part of the Institutes, ca. Præmunire. Which resolution of the Judges was signified by Popham Chief Justice to the Lord Chancellor, and thereupon no further proceeding was against Sir Moyl Finch, but his plea stood.

\* 27 E.3.cap.1.  
4 H.4.cap.22.&c.  
in the preamble.  
Doct. & Stud.30.  
W.2.ca.5.  
Vid. Pasch. 5 E. 4.  
Coram rege Rot.  
35. Sir Simon  
Norres case.  
Nota.  
Mich. 37 & 38 El.  
in Cancellar'.

In a case depending in Chancery by English bill between Mears Plaintiff and Saint-John and his wife Administratrix of John Alnion Defendant, the case was this: That the Intestate took the profits of the lands of the Plaintiff being within age by force of a trust reposed in him by the Father of the Plaintiff by his last Will, the yearly value of which lands was fourscore pounds per annum, and the Intestate took the profits from the 23 year of Queen El. until the 33 year of her reign, and with parcel of the profits purchased lands in fee which descended to his heir, and left assets to his Administratrix one of the Defendants



dants to satisfie the Plaintiff, all debts paid. The question was, whether in this case the Administratrix might not be charged in equity for the said mean profits. And Sir Thomas Egerton Master of the Rolls said, that he had seen a case in Chancery in Anno 34 H.6. resolved by all the Judges of England remaining in the Tower, that where the Feoffees to use took the profits of the land, and received the rents, and made their Executors, and died leaving assets to satisfie all debts over and above the said rents and profits, that the Executors should be charged to satisfie cessi que use for the said rents and profits, and accordingly it was decreed in Mears case against the Defendant: but whether the heir should be contributory or no, it was doubted.

Withams case in the Chancery was, that a term for years was granted to the use of a feme sole, she took husband and died, whether the husband should have the use, or the Administrators of the feme, was referred to the Judges; and by them it was resolved, that the Administrators should have it, and not the husband, because that this trust of a feme was a thing in privacy, and in nature of an action, for which no remedy was but by Writ of Subpoena. And so it was resolved by the Justices in Waterhouses case, Hil. 8 Eliz. Eborum, for the trust runneth in privacy in this case, and a husband should not be tenant by the curtesie of an use, nor the Lord of the Willain should have it at the Common Law.

A man possessed of a term for years in Lands, by his last Will devised the same to one and the heirs of his body begotten, made his Executors and died; the Devisee entreath by the assent of the Executors, hath issue and aliens the term and dieth: this alienation barreth the issue, for a term for years cannot be entailled. And afterwards Anno 31 Eliz. in a case depending in Chancery between Higgins and Milles it was certified by the Lord Anderson and Justice Walmley (to whom it was referred) that no estate tail could be of a term, and that the alienation of the Devisee did bar the issue.

In a Premunire between John Perrot Plaintiff, and T. M. H. W. and others Defendants, it was resolved by Sir Christopher Wray Chief Justice, and the Court of Kings Bench, that the Queen could not raise a Court of Equity by her Letters Patents, and that there could be no Court of Equity but by Act of Parliament, or by prescription time out of mind of man. But the Queen might grant power tenere placita or consilium de plea, for all must judge according to one ordinary rule of the Common Law, but otherwise it is of proceedings extraordinary without any certain rule.

These cases which upon so great and mature deliberation have been resolved by the Judges of the Realm, and whereunto we were privy and well acquainted with, we have thought good to report, and publish for the better direction in like cases hereafter.

He is made Lord Chancellor of England, or Lord Keeper of the Great Seal, per traditionem magni sigilli sibi per dominum regem, and by taking his Oath. Forma Cancellarium constituendi regnante Henrico secundo fuit appendendo magnum Angliæ sigillum ad collum Cancellarii electi.

Some have gotten it by Letters Patents, *a* at will, and *b* one for term of his life; but it was holden void, because an ancient office must be granted, as it hath been accustomed.

It is enacted and declared, that the Common Law of this Realm is and always was, and ought to be taken, that the Keeper of the Great Seal of England for the time being hath always had, used, and executed, and from thenceforth may have, take, use, and execute the same and the like place, authority, preheminence, jurisdiction, execution of Laws, &c. as the Lord Chancellor of England for the time being lawfully used, &c. And so it appeareth in 18 E. 3. nu. 41. that the Lord Chancellor, or Lord Keeper for the time being ought to have consilium:

Pasch. 32 El. id  
Cancellaria.  
Withams case.  
Eborum.  
Vide 7 E. 4. 14.  
& 18 E. 4. 11. & 12.

Trin. 28 El. ad-  
judge in the Kings  
Bench, in Pea-  
cocks case.

31 Eliz. between  
Higgins and Mills  
in Cancellaria.

Mich. 26 & 27 El.  
Coram Rege.  
Perrots case.  
10 H. 6. 15 in Lon-  
don by prescrip-  
tion.  
Nota, this resolu-  
tion is against the  
Court of Requests.  
See hereafter cap.  
9.

¶ How he is created  
Camden p. 131.

*a* 35 H. 6. 3. b. of  
Winch. 1 H. 6. nu.  
16.  
*b* Cardinal Wool-  
sey.  
*c* 5 El. ca. 18.

Rot. Par. 18 E. 2.  
15. 41.



*a* Rot. Par. 1 H. 6. nu. 13, 14.

13 R. 2. nu. 7.

Vide Camden ubi supra.

*b* Stat. de forma mittendi extract. in Scaccarium.

Anno 16 E. 1.

Vet. Mag. Carta, 2 part. fo. 47. b.

*c* An. 27 E. 1.

de libertatibus perquirendis.

Vet. Mag. Carta, part 1. fo. 126. &

2 part fo. 57, &c.

*¶* Cancellarius unde.

6 E. 4. 9.

Dier 3 Eliz. 137.

2 E. 3. 7. 17 E. 3. 59

21 E. 3. 47.

Lib. 2 fo. 14. &c.

*¶* The Lord Chancellors Oath.

*d* Rot. Par. 10 R. 2. Rot. 8. the Oath recited.

Vid. Rot. Parl.

11 H. 4. 1. nu. 28.

*e* Because he hath power of Judicature as is aforesaid.

*f* 10 R. 2. Rot. Par. nu. 8.

2 H. 4. nu. 10.

15 E. 3. nu. 10.

15. 37. 41, 42.

*g* Laine is an ancient French word, and signifieth to hide.

*h* Rot. Parl. 10 R. 2. nu. 6, 7, 8. &c. the case of *Mic. de la Pole* Chancellor of England.

*a* I find that King H. 5. had two Great Seals, one of Gold, which he delivered to the Bishop of Duresme, and made him Lord Chancellor of England, and another of Silver, which King Henry the 5 delivered to the Bishop of London to keep.

*b* William de Ayremin Garden des Rolles del' Chancelar' & ses compagnions gardens del Grand Seale. At this time was Robert Burnell Bishop of Bath and Wells Chancellor of England.

*c* It is to be observed, that where divers ancient Statutes speak of the Chancellor and of his Lieutenant, it must of necessity be intended of such a Lieutenant as the Law doth allow of, and that cannot be of a Deputy, for the Chancellor cannot make a Deputy; but Locum tenens is to be taken for one that holdeth the place, or hath equal authority of the Chancellor, and that is Custos Magni Sigilli: and this agreeth with the judgment of the said Parliament in 5 Eliz. But all questions are now taken away by the said Act of 5 Eliz. and at this day there being but one Great Seal, there cannot be both a Lord Chancellor and a Lord Keeper of the Great Seal at one time, because both these are but one Office, as it is declared by the said Act.

It is said before, that the Chancellor by his ordinary power may hold plea of Scire fac' to repeal the Kings Letters Patents under the Great Seal being always inrolled in this Court, which we (to make a true derivation of his name) shall now particularly touch. This Writ of Scire fac' to repeal Letters Patents doth lye in this ordinary course of Justice in three cases. The first, when the King by his Letters Patents doth grant by several Letters Patents one and the self same thing to several persons, the former Patentee shall have a Scire fac' to repeal the second Patent. Secondly, when the King granteth any thing that is grantable upon a false suggestion, the King by his prerogative Jure Regio may have a Scire fac' to repeal his own grant. Thirdly, when the King doth grant any thing, which by Law he cannot grant, he Jure Regio (for advancement of Justice and right) may have a Scire fac' to repeal his own Letters Patents. Now the Judgment in all these three cases is, Quod prædictæ literæ Patentes dicti domini Regis revocentur, cancellentur, evacuentur, adnullentur, & vacuæ, & invalidæ pro nullo penitus habeantur, & teneantur; ac etiam quod irrotulamentum corundem cancelletur, cassetur, & adnihiletur, &c. Hereof our Lord Chancellor of England (for foreign Chancellors, it may be, have not like Authority) is called Cancellarius, à cancellendo, i. à digniori parte, being the highest point of his jurisdiction to cancel the Kings Letters Patents under the Great Seal, and damming the inrollment thereof, by drawing strikes through it like a Lettice.

And all this which hath been said concerning the office of the Lord Chancellor, or Lord Keeper, is included within his *d* Oath, which followeth in these words, and consisteth upon six parts. He shall swear,

1. That well and truly he shall serve our Sovereign Lord the King and his people in the office of Chancellor (or Lord Keeper.)

2. That he shall do right to all manner of people, poor and rich, after the Laws and usages of the Realm.

3. That he shall truly counsel the King, and his counsel he shall *g* layne and keep.

4. That he shall not know nor suffer the hurt or disheriting of the King, or that the rights of the Crown be decreased by any means, as far as he may let it.

5. And if he may not let it, he shall make it clearly and expressly to be known to the King, with his true advice and counsel.

6. And that he shall do and purchase the Kings profit in all that he reasonably may. As God him help, and by the Contents of this Book.



## Articles against Cardinal Woolsey.

Now for as much as the Articles exhibited to King H. 8. 1 die Decembris Anno 21 of his Reign, by the Lords and others of his Privy Council (whereof Sir Thomas More Lord Chancellor was one) and by two of the principal Judges of the Realm against Cardinal Woolsey, do in divers of the Articles concern the jurisdiction of the Chancery, (viz. the 20 and 26 Articles, &c.) and other titles of this fourth part of the Institutes, we have thought good justly and truly to transcribe from the very Original, under the proper hands of the Lords and others of the Privy Council, and of the said Judges (which we have seen and had in our custody) and have compared this Transcript with the Original it self, and have (because they are of great weight and use to many purposes) transcribed it de verbo in verbum without omission of any thing, as matters of that nature ought to be: and the rather, for that in our Chronicles they are very untruly rehearsed: and before this time (that we find) the true Articles were never printed.

Constrained by necessity of our fidelity and conscience, complain and shew to your most Royal Majesty, we your Graces humble, true, faithful, and obedient subjects: that the Lord Cardinal of York, lately your Graces Chancellor, presuming to take upon him the authority of the Popes Legat *De latere*, hath by divers and many sundry ways and fashions committed high and notable grievous offences, misusing, altering, and subverting the order of your Graces Laws: and otherwise contrary to your High Honour, Prerogative, Crown, Estate, and Dignity regal, to the inestimable great hinderance, diminution, and decay of the universal wealth of this your Graces Realm. And it is touched summarily and particularly in certain Articles here following, which be but a few in comparison of all his enormities, excesses, and transgressions committed against your Graces Laws.

That is to say;

1. First, Where your Grace and Noble Progenitors within this your Realm of England, being Kings of England, have been so free, that they have had in all the world none other Sovereign, but immediate subject to Almighty God in all things touching the regality of your Crown of England, and the same preeminence, prerogative, jurisdiction, lawful and peaceable possession your Grace and your noble Progenitors have had, used, and enjoyed, without interruption or business therefore by the space of 200 years and more: whereby your Grace may prescribe against the Popes Holiness, that he should not, nor ought to send or make any Legat, to execute any authority Legatine contrary to your Graces prerogative within this your Realm. Now the Lord Cardinal of York being your subject and natural liege born, hath of his high, orgallous, and insatiable mind, for his own singular advancement and profit, in derogation, and to the great imblemishment and hurt of your said regal jurisdiction and prerogative, and the long continuance of the possession of the same, hath obtained authority Legatine: by reason whereof he hath not only hurt your said prescription, but also by the said authority Legatine, hath spoiled and taken away from many houses of Religion within this your Realm much substance of their goods. And also hath usurped upon all your Ordinaries within this your Realm much part of their jurisdiction, in derogation of your prerogative, and to the great hurt of your said Ordinaries, Prelates, and Religious.

The sovereignty, prerogative regal jurisdiction, and freedom of the Crown of England

Prescribe.

Cardinal of York.

Authority Legatine.  
Spoiled many houses of religion  
Usurped upon Ordinaries.

2. Also the said Lord Cardinal being your Ambassadors in France, made a treaty with the French King for the Pope, your Majesty not knowing any part thereof, nor named in the same; and binding the said French King to abide his order and award if any controversie or doubt should arise upon the same, betwixt the said Pope and the French King.

Ambassador.

3. Also the said Lord Cardinal being your Ambassador in France, sent a Commission to Sir Gregory de Cassalis under your Great Seal in your Graces name, to conclude a treaty of Amity with the Duke of Ferrare, without any command.



commandment or Warrant of your Highness, nor your said Highness advertised or made privy to the same.

The King and I.

4. Also the said Lord Cardinal, of his presumptuous mind, in divers and many of his Letters and instructions sent out of this Realm to outward parts, had joyned himself with your Grace, as in saying and writing, The King and I would ye should do thus. The King and I do give unto you our hearty thanks. Whereby it is apparent that he used himself more like a fellow to your Highness, then like a subject.

Oath.

5. Also, where it hath ever been accustomed within this Realm, that when Noble Men do swear their household servants, the first part of their oath hath been, that they should be true liege men to the King and his Heirs Kings of England: The same Lord Cardinal caused his servants to be only sworn to him, as if there had been no Sovereign above him.

Great Pocks.

6. And also whereas your Grace is our Sovereign Lord and Head, in whom standeth all the surety and wealth of this Realm; the same Lord Cardinal knowing himself to have the foul and contagious disease of the Great Pocks broken out upon him in divers places of his body, came daily to your Grace, rowning in your ear, and blowing upon your most noble Grace with his perilous and infective breath, to the marvellous danger of your Highness, if God of his infinite goodness had not better provided for your Highness. And when he was once healed of them, he made your grace to believe, that his disease was an Imposition in his head and of none other thing.

Provision.  
Premunire.

7. Also the said Lord Cardinal by his authority Legatine, hath given by prescription the Benefices of divers persons, as well Spiritual as Temporal, contrary to your Crown and Dignity, and your Laws and Statutes therefore provided: by reason whereof he is in danger to your Grace of forfeiture of his lands and goods, and his body at your pleasure.

Counsellor.  
Forain Ambassadors.

8. Also the said Lord Cardinal taking upon him otherwise then a true Counsellor ought to do, hath used to have all Ambassadors to come first to him alone, and so hearing their charges and intents, it is to be thought he hath instructed them after his pleasure and purpose before that they came to your presence, contrary to your High commandment by your Graces mouth to him given: and also to other persons sent to him by your Grace.

Letters sent from  
beyond Sea.  
First to him.

9. Also the said Lord Cardinal hath practised so, that all manner of Letters sent from beyond the Sea to your Highness have comen first to his hands, contrary to your high commandment by your own mouth, and also by others sent to him by your Grace: by reason whereof, your Highness nor any of your Council had knowledge of moe matters but of such as it pleased him to shew them, whereby your Highness and your Council have been compelled of very force to follow his devices, which oftentimes were set forth by him under such crafty and covert meanings, that your Highness and your Council have oftentimes been abused: insomuch that when your Council have found and put divers doubts and things which afterward have ensued, he to abuse them used these words, [ I will lay my head that no such thing shall happen. ]

Forain intelligence to him, &c.

10. Also the said Lord Cardinal hath practised, that no manner of person having charge to make espial of things done beyond the Sea, should at their return come first to your Grace, nor to any other of your Council, but only to himself: and in case they did the contrary, he punished them for their so doing.

Licenses to transport grain and victual.

11. Also the said Lord Cardinal hath granted licenses under your Great Seal, for carrying out of Grain and other Victuals after the restraint hath been made thereof, for his own lucre and singular advantage of him and his servants for to send thither as he bare secret favour, without your Graces Warrant or knowledge thereof.

Ambassadors resident with other Princes.

12. Also the said Lord Cardinal used many years together not only to write unto all your Ambassadors resident with other Princes in his own name, all advertisements concerning your Graces affairs being in their charge, and in the same his Letters wrote many things of his own mind without your Graces pleasure



pleasure known, concealing divers things which had been necessary for them to know; but also caused them to write their advertisements unto him. And of the same Letters he used to conceal for the compassing of his purpose many things both from all your other Counsellors, and from your self also.

13. Also where good hospitality hath been used to be kept in houses and places of religion of this Realm, and many poor people thereby relieved, the said hospitality and relief is now decayed and not used: and it is commonly reported that the occasion thereof is, because the said Lord Cardinal hath taken such impositions of the Rulers of the said houses, as well for his favour in making of Abbots and Priors, as for his visitation by his authority Legatine. And yet nevertheless taketh yearly of such Religious houses, such yearly and continual charges, as they be not able to keep hospitality as they were used to do: which is a great cause that there be so many Vagabonds, Beggars and Thieves.

14. Also where the same L. Cardinal said before the suppression of such houses as he hath suppressed, that the possessions of them should be set to ferme among your lay subjects after such reasonable yearly rent as they should well thereupon live, and keep good hospitality: and now the demesne possession of the same houses since the suppression of them had been surveyed, mete, and measured by the Acre, and he now set above the value of the old rent. And also such as were fermors by Covent seal, and copyholders be put out and amoved of their fermes, or else compelled to pay new fine contrary to all equity and conscience.

15. Also the said Lord Cardinal sitting among the Lords and other of your most honorable Privy Council, used himself, that if any man would shew his mind, according to his duty, contrary to the opinion of the said Cardinal, he would so take him up with his accustomed words, that they were better to hold their peace then to speak, so that he would hear no man speak but one or two great personages, so that he would have all the words himself, and consumed much time with a fair tale.

16. Also the said Lord Cardinal by his ambition and pride hath hindered and undone many of your poor subjects for want of dispatchment of matters, for he would no man should meddle but himself, insomuch that it hath been affirmed by many wise men, that ten of the most wisest and most expert men in England were not sufficient in convenient time to order the matters that he would retain to himself. And many times he deferred the ending of matters, because that suiters should attend and wait upon him, whereof he had no small pleasure, that his house might be replenished with suiters.

17. Also the said Lord Cardinal by his authority Legatine hath used, if any spiritual man having any riches or substance, deceased, he hath taken their goods as his own, by reason whereof their wills be not performed: And one mean he had to put them in fear, that were made Executors, to refuse to meddle.

18. Also the said Lord Cardinal constrained all Ordinaries in England yearly to compound with him, or else he will usurpe half or the whole of their jurisdiction by prevention, not for good order of the Diocesses, but to extort treasure: for there is never a poor Archdeacon in England, but that he paid yearly to him a portion of his living.

19. Also the said Lord Cardinal hath not only by his untrue suggestion to the Pope shamefully slandered many good religious houses, and good vertuous men dwelling in them, but also suppressed by reason thereof above thirty houses of Religion. And where by authority of his Bull he should not suppress any house, that had no men of Religion in number above the number of 6 or 7, he hath suppressed divers houses that had above the number. And thereupon hath caused divers offices to be found by verdict untrue, that the Religious persons so suppressed had voluntarily forsaken their said houses, which was untrue, and so hath caused open perjury to be committed, to the high displeasure of Almighty God.

20. Also the said Lord Cardinal hath examined divers and many matters in the Chancery after judgment thereof given at the Common Law, in subversion of

Hospitality in houses of Religion decayed.

Impositions.

Yearly charges.

Suppression of houses.

Reasonable rents.

Above the value.

New fine.

Abused the Privy Council.

All the words himself.

Ambition and pride.

Want of dispatch. No man to meddle but himself.

Suters to attend.

Taken the goods of Spiritual men deceased.

All Ordinaries, &c. to compound with him.

Slandered religious houses to the Pope.

By authority of his Bull suppressed 30 houses of Religion.

Caused divers Officers to be found untrue.

Perjury.

Examined matters in Chancery after judgments.



of your Laws, and made some persons restore again to the other party condemned that, that they had in execution by vertue of the Judgment at the Common Law.

Injunctions.

21. Also the said Lord Cardinal hath granted many Injunctions by Writ, & the parties never called thereunto, nor Will put in against them : and by reason thereof, divers of your Subjects have been put from their lawful possession of their lands and tenements. And by such means he hath brought the more party of the suiters of this your Realm before himself, whereby he and divers of his servants have gotten much riches, and your Subjects suffered great wrongs.

His servants rich.

The Popes pardons.

22. Also the said Lord Cardinal to augment his great riches hath caused divers pardons granted by the Pope to be suspended, which could not be revived, till that the said Lord Cardinal were rewarded, and also have a yearly pension of the said pardon.

Oppression.

23. Also the said Lord Cardinal not regarding your Laws nor Justice, of his extort power hath put out divers and many fermors of his lands, and also Pastures of the Archbishoprick of York and the Bishoprick of Winchester, and of the Abbey of St. Albons, which had good and sufficient grant thereof by your Laws.

Elections of Abbots, Priors, &c.

24. Also the same Lord Cardinal, at many times when any houses of Religion have been void, he hath sent his Officers thither, and with crafty persuasions hath enduced them to compromit their election in him : And that before he named or confirmed any of them, he and his servants received so much great goods of them, that in manner it hath been to the undoing of the house.

Visited.  
Extortion.

25. Also by his authority Legatine, the same Lord Cardinal hath visited the most part of the religious Houses and Colledges of this your Realm, and hath taken from them the twenty fifth part of their livelihood, to the great extortion of your Subjects and derogation of your Laws and prerogative, and no Law to bear him so to do.

Injunctions.  
Threatned Judges

26. Also when matters have been near at judgment by Proces at your Common Law, the same Lord Cardinal hath not only given and sent Injunctions to the parties, but also sent for your Judges, and expressly by threats commanding them to defer the judgment, to the evident subversion of your Laws, if the Judges would so have ceased.

Pension out of France.  
His son Winter.

27. Also whereas neither the Bishop of York nor Winchester, nor the Abbey of St. Albons, nor the profit of his Legation, nor the benefit of the Chancery, nor his great pension out of France, nor his Wards, and other inordinate taking could not suffice him, he hath made his son Winter to spend Seven and twenty hundred pounds by the year, which he taketh to his own use, and giveth him not past Two hundred pounds yearly to live upon.

Legat De latere.  
His promise.  
Nothing against prerogative or regality.  
Or to the prejudice of ordinary jurisdiction.  
Breach of promise

28. Also where the said Lord Cardinal did first sue unto your Grace to have your assent to be Legat de latere, he promised and solemnly protested before your Majesty, and before the Lords both Spiritual and Temporal, that he would nothing do nor attempt by the vertue of his Legacy, that should be contrary to your gracious prerogative or regality, or to the damage or prejudice of the Jurisdiction of any Ordinary, and that by his Legacy no man should be hurt nor offended : And upon that condition, and no other, he was admitted by your Grace to be Legate within this your Realm : which condition he hath broken, as is well known to all your Subjects. And when that he made this promise, he was busie in his suit at Rome to visit all the Clergy of England both exempt and not exempt.

Untrue surmise to the Pope of the Clergy.

29. Also upon the suit of the said Lord Cardinal at Rome to have his authority Legatine, he made untrue surmise to the Popes Holiness against the Clergy of your Realm : which was, that the regular persons of the said Clergy had given themselves in reprobum sensum ; which words St. Paul writing to the Romans applied to abominable sin : which slander to your Church of England shall for ever remain in the Register at Rome, against the Clergy of this your Realm.

30. Also



30. Also the said Lord Cardinal had the more part of the goods of Doctor Smith late Bishop of Lincoln, Bishop Savage of York, Master Dalbye Archdeacon of Richmond, Master Tonyers, Doctor Rothall late Bishop of Durham, and of Doctor Foxe late Bishop of Winchester, contrary to their wills, and your Laws and Justice.

Oppression and Extortion.

31. Also at the Oier and Terminer at York, Proclamation was made that every man should put in their Bills for extortion of Ordinaries, and when divers bills were put in against the Officers of the said Lord Cardinal of extortion, for taking twelve pence of the pound for probacion of Testaments, whereof divers bills were found before Justice Fitzherbert and other Commissioners, the said Lord Cardinal removed the said Indictments into the Chancery by Certiorari, and rebuked the said Fitzherbert for the same cause.

Extortion of Ordinaries. Indictments of extortion of Ord. removed into the Chancery.

32. Also the said Lord Cardinal hath busied and endeavoured himself by craft and untrue tales to make dissention and debate amongst your Nobles of your Realm, which is ready to be proved.

Made debate between the Nobles of the Realm.

33. Also the said Lord Cardinals Officers have divers times compelled your subjects to serve him with Carts for Carriage, and also his servants have taken both Corn and Cattel, Fish, and all other Victual, at your Graces price, or under, as though it had been for your Grace, which is contrary to your Laws.

Purveyance for him. Purveyance at the Kings price. Vid. inf. 35, 36.

34. Also the said Lord Cardinal hath misused himself in your most honourable Court, in keeping of as great estate there in your absence, as your Grace would have done if you had been there present in your own person.

Keeping great estate in Court.

35. Also his servants by virtue of your Commission under your Broad Seal by him to them given, have taken cattel and all other victual at as low a price as your Purveyors have done for your Grace by your Prerogative, against the Laws of your Realm.

Purveyance. Prerogative id Purveyance.

36. Also where it hath been accustomed that your Purveyors for your honourable household, have had yearly out of your Town and liberty of S. Albons three or four hundred quarters of wheat, truth it is, that since the Lord Cardinal had the room of the Abbot, that your said Purveyors could not be suffered by him and his officers to take any wheat within the said Town or liberty.

Purveyance:

37. Also he hath divers times given Injunctions to your servants that have been for causes before him in the Star-chamber, that they, nor other for them should make, labour by any manner of way, directly or indirectly, to your Grace to obtain your Graces favour or pardon; which was a presumptuous intent for any subject.

Injunction not to sue for pardon for causes in the Star-chamber. A great presumption.

38. Also the said Lord Cardinal did call before him Sir John Stanly Knight, which had taken a Farm by Covert Seal of the Abbot and Covert of Chelster, and afterwards by his power and might contrary to right committed the said Sir John Stanly to the prison of Fleet by the space of a year unto such time as he compelled the said Sir John to release his Covert Seal to one Leghe of Adlington, which married one Larks daughter, which woman the said Lord Cardinal kept, and had with her two children. Whereupon the said Sir John Stanly upon displeasure taken in his heart made himself Monk in Westminster, and there died.

Oppression.

Leghe of Adlington. The Cardinal kept Larkes daughter, and had by her two children.

39. Also on a time your Grace being at S. Albons according to the ancient custom used within your Merge, your Clerk of the Market doing his office, did present unto your Officers of your most honourable household the prizes of all manner of Victuals within the precinct of the Merge. And it was commanded by your said Officers to set up the said prizes both on the gates of your honourable household, and also within the market place within the town of S. Albons, as of ancient custom hath been used. And the Lord Cardinal hearing the same, presumptuously, not like a subject, caused the aforesaid prizes which were sealed with your Graces Seal, accustomedly used for the same, to be taken off and pulled down in the said market place, where they were set up: and in the same places set up his own prizes sealed with his seal, and

Clerk of the Market. Prices of Victuals.

Pulled down the price, &c.

would



would if it had not been letted in semblable manner, used your seal standing upon your gates. And also would of his presumptuous mind have openly set in the stocks within your said town your Clerk of your market. By which presumption and usurpation your Grace may perceive that in his heart he hath reputed himself to be equal with your real Majesty.

The Cardinals hat  
in the Kings coin  
of groats, &c.

40. Also the said Lord Cardinal of his further pompous and presumptuous mind hath enterprised to joyn and imprint the Cardinals hat under your arms in your coin of groats made at your City of York, which like deed hath not been seen to be done by any subject within your Realm before this time.

Subpoena.

41. Also where one Sir Edward Jones Clerk, Parson of Orewly in the County of Buck' in the eighteenth year of your most noble reign left his said Parsonage with all tithes and other profits of the same to one William Johnson by Indenture for certain years, within which years, the Dean of the said Cardinals Colledge in Oxenford pretended title to a certain portion of tithes within the said Parsonage, supposing the said portion to belong to the Parsonage of Chichelly, which was appointed to the Priory of Tykeford lately suppressed, where (of truth) the Parsons of Orewly have been peaceably possessed of the said portion out of the time of mind. Whereupon a Subpoena was directed to the said Johnson to appear afore the Lord Cardinal at Hampton-Court, out of any term, with an Injunction to suffer the said Dean to occupy the said portion. Whereupon the said Johnson appeared before the said Lord Cardinal at Hampton Court, where without any bill, the said Lord Cardinal committed him to the Fleet, where he remained by the space of twelve weeks, because he would not depart with the said portion, And at the last upon a recognisance made that he should appear before the said Lord Cardinal whensoever he was commanded, he was delivered out of the Fleet; howbeit as yet the said portion is so kept from him that he dare not deal with it.

Injunction.

42. Also where one Martin Decowra had a lease of the Mannor of Balsall in the County of Warwick for term of certain years, an Injunction came to him out of the Chancery by Writ upon pain of a thousand pounds, that he should avoid the possession of the same Mannor, and suffer Sir George Throckmorton Knight to take the profits of the same Mannor to the time the matter depending in the Chancery between the Lord of S. Johns and the said Decowra were discussed. And yet the said Decowra never made answer in the Chancery, ne ever was called into the Chancery for that matter, and now of late he hath received a like Injunction upon pain of two thousand pounds contrary to the course of the Common Law.

Heresies and erro-  
neous sects.

43. Also whereas in the Parliament Chamber, and in open Parliament communication and devises were had and moved, wherein mention was an incident made of matters touching heresies, and erroneous Sects; It was spoken and reported by one Bishop there being present, and confirmed by a good number of the same Bishops, in presence of all the Lords Spiritual and Temporal then assembled, that two of the said Bishops were minded and desired to repair unto the University of Cambridge for examination, reformation and correction of such errors as then seemed and were reported to reign amongst the Students and Scholars of the same, as well touching the Lutheran sect and opinions, as otherwise. The Lord Cardinal informed of the good minds and intents of the said two Bishops in that behalf, expressly inhibited and commanded them in no wise so to do. By means whereof, the same errors, as they affirmed, crept more abroad and took greater place; saying furthermore that it was not in their defaults, that the said heresies were not punished, but in the said Lord Cardinal, and that it was no reason any blame or lack should be attributed to them for his offence: whereby it evidently appeareth that the said Lord Cardinal besides all other his hainous offences, hath been the impeacher and disturber of due and direct correction of heresies, being highly to the danger and peril of the whole body, and good Christian people of this your Realm.

44. Finally, soasmuch as by the aforesaid Articles is evidently declared



to your most Royal Majesty, That the Lord Cardinal by his outrageous pride hath greatly shadowed a long season your Graces honour, which is most highly to be regarded, and by his insatiable avarice and ravenous appetite to have riches and treasure without measure, hath so grievously oppressed your poor subjects with so manifold crafts of bribery and extortion, that the Common-wealth of this your Graces Realm is thereby greatly decayed and impoverished. And also by his cruelty, iniquity, affection and partiality, hath subverted the due course and order of your Graces Laws, to the undoing of a great number of your loving people.

Please it your most Royal Majesty therefore of your excellent goodness towards the Weal of this your Realm, and Subjects of the same, to set such order and direction upon the said Lord Cardinal, as may be to the terrible example of other to beware so to offend your Grace, and your Laws hereafter. And that he be so provided for, that he never have any power, Jurisdiction or Authority hereafter to trouble, vex, and impoverish the Common-wealth of this your Realm, as he hath done heretofore, to the great hurt and damage of every man almost high and low, which for your Grace so doing, will daily pray, as their duty is, to Almighty God for the prosperous estate of your most Royal Majesty, long to endure in honour and good health, to the pleasure of God, and your hearts most desire. Subscribed the first day of December the 21 year of the reign of our Sovereign Lord King Henry the 8.

T. More. T. Norfolk. Charl. Suff. Tho. Dorset. H. Exon. John Oxinford. H. Northumberland. G. Shrewsbury. R. Fitzwater. T. Rocheford. T. Darcy. W. Mountjoy. William Sandys.

William Fitzwilliam. Henry Guldeford. \* John FitzJames. \* Anthony FitzHerbert.

So these Articles began to be subscribed by Sir Thomas More Lord Chancellor, and ended with the two Judges of the Law.

There be in this Court many Officers, Ministers, and Clerks of the Court, the principal whereof is the <sup>a</sup> Master of the Rolls, anciently called Garden des Rolles, Clericus Rotulorum, Custos Rotulorum. And this is an ancient office, and grantable either for life, or at will, at the pleasure of the King. <sup>b</sup> The house annexed to his office, is called domus Conversorum, so called because <sup>c</sup> King H. 3. founded this house to be a house of Jews as should be converted to the true religion of Jesus Christ, and there should have maintenance and allowance, which continueth to this day. King E. 3. anno 15. of his reign, by Letters Patents annexed this house to the office of Custos rotulorum, and this office is grantable by Letters Patents: for the more assurance whereof, and of divers things worthy of observation, we have thought good to set down an Act of Parliament concerning this matter in these words.

<sup>e</sup> King E. 3. by his Charter anno 51. of his reign did grant after the death of William Burstall then Keeper of the Rolls and of the same house of Converts of the Kings grant to the Keeper of the Rolls for the time being, and annexed it to the said office imperpetuum, and further granted that after the decease of the said William, the Chancellor or Keeper of the Great Seal after the voidance of the said office of keeping of the Rolls to institute successively the Keepers of the Rolls, in dicta domo Conversorum, & custodes illos ponend' in possessione ejusdem, &c. This Chapter was confirmed by Act of Parliament, as by that which followeth appeareth.

*Ad nostre tres doute H. le roy & son honorable conseil en cest Parliament supplie son petit Clerke William de Burstall Gardiner des rolles de la Chancellerie, & Gardiner de la Meason des Converses de Londres quele est de vostre honorable Patronage que come le dit William a ses tresgraundes custages & reparille la Chappelle de les edifces du dit meason, & nostre Segnior le roy dareien (que dieu assoil) pur maintenance de la dit Chappelle & meason a la prier du dit William granta pur luy & ses heires per*

\* Chief Justice of England.

\* Sir Anth. Fitzh.

<sup>a</sup> Justice of the Court of Common Pleas.

<sup>a</sup> He was not called Master of the Rolls, until 11 H. 7. ca. 20. but never so called in any Letters Pa-

tents of this office. <sup>b</sup> Fortescue ca. 24.

\* See the Charter of erection by King H. 3. Hollingsf. 1281 Vid. Rot. Parl.

18 E. 1. nu.

There were above fourscore Converts in 18 E. 1. and petitioned in Parliament for more relief.

<sup>c</sup> Rot. Pat. 11 Ap. 51 E. 3. which you may read at large in Hollingsf. pa.

1281, 1282.

<sup>d</sup> Ex bundello petic. Parl. anno

1 R. 2.

Garden des rolles de la Chancery & de la meason des Converses de Londres.

Nota, the Master of the Rolls or Keeper is Gardein of the house of Converts of the Patronage or gift of the King.



*ses Letters Patents que le dit Meason de Converſe apres le deceaſe du dit William demerera a tous jours as Gardein de dits Rolles pur le temps eſteants tanque come ils ſeront en le dit office ſans certain form compriſe en Letters ſurſdites, Pleaſe a noſtre dit Seignior le Roy & Seigniors den Parliament confirmer la dit grant & les Letters Patents iſſint ent faitz, & les choſes compriſes en yeels en ouier de charitie. Whereunto full aſſent was given by Authority of Parliament.*

Rot.Pat. 6 R.2.

After which Act of Parliament John de Waltham Gardein or Keeper of the Rolls obtained of R.2. in the ſixth year of his reign Letters Patents, whereby the King granted to him & ſucceſſoribus ſuis Cuſtodibus Rotulorum the ſaid houſe of Converts; and the reaſon hereof ſeemeth to be, for that in the ſaid Charter of 51 E.3. Sibi & ſucceſſoribus ſuis wanted. This John of Waltham was in 12 R.2. Biſhop of Salisbury, and after Treasuſer of England. Whereby it appeareth what eſtate the Maſter of the Rolls hath in domo Converſorum. And this houſe is the place where the Rolls of the Chancery are kept, and are ſo called becauſe they are written in Parchment, and made up in bundles of Rolls, that is to ſay, of Charters, Letters Patents, Commiſſions, Wards inrolled, Recogniſances, &c.

Theſe Records ſince the beginning of H.7. remain in the Rolls, and all beſore were tranſmitted into the Tower, and there remain.

Clericus noſter  
Cuſtos rotulorum  
& librorum Cancellar' noſtræ cum omnibus ad officium illud ſpect'.  
Cuſtodia domus noſtræ Converſorum.

Alſo for further manifeſtation hereof, we have thought good to ſet down Letters Patents of this office in the 25 year of H. 6. and rather for that it was granted Authoritate Parliamenti, in theſe words. Henricus Dei gratia Rex Angliæ & Franciæ, & Dominus Hiberniæ, omnibus ad quos præſentes lre pervenerint. Sciatis quod cum nos tertio decimo die Novembris, anno regni noſtri decimo ſeptimo conſtituimus dilectum clericum noſtrum Johannem Stopenden Cuſtodem rotulorum & librorum Cancellariæ noſtræ cum omnibus ad officium illud ſpectantibus, percipiend' in eodem officio feodo, commoditates, & proficua conſueti, quamdiu nobis placuerit. Et ulterius dederimus, & conceſſerimus eidem Johanni cuſtodiam domus noſtræ Converſorum præſato officio pro inhabitatione dicti Cuſtodis per progenitores noſtros quondam reges Angliæ ab antiquo depoſitæ, & annexæ: Habendum & tenendum cuſtodiam illam cum omnibus juribus & pertinentiis ſpectantibus ad eandem, prout in lris noſtris patentibus inde conſectis plenius continetur. Nos bonum & gratuitum ſerviciu quod dilectus clericus noſter Thomas Kirkby nobis ante hæc tempora multipliciter impendit, indiesque impendere non deſiſtit merite contemplantes, ac de fidelitate, circumſpectione & induſtria ipſius Thomæ plenius confidentes, conſtituimus ipſum Thomam Cuſtodem rotulorum & librorum Cancellariæ noſtræ cum omnibus ad officium illud ſpectantibus, percipiendo in eodem officio feoda, commoditates, & proficua conſueti à tempore quo officium illud per Ceſſionem ſeu alio modo quocunque proximo vacare contigerit, quamdiu nobis placuerit. Et ulterius dedimus & conceſſimus, ac per præſentes damus & concedimus eidem Thomæ, cuſtodiam dictæ domus noſtræ Converſorum præſato officio pro inhabitatione ejuſdem cuſtodis per dictos progenitores noſtros ab antiquo ( ut præmittitur ) diſpoſitæ & annexæ. Habend' & tenend' eidem Thomæ cuſtodiam illam cum omnibus juribus & pertinentiis ſpectantibus ad eandem quamdiu ipſum Thomam dictum officium Cuſtodis rotulorum & librorum prædictorum habere & tenere ſive occupare contigerit. Eo quod expreſſa mentio de vero valore annuo officii prædicti & cæterorum præmiſſorum ſeu alicujus eorum, aut de aliis donis ſeu conceſſionibus per nos præſato Thomæ ante hæc tempora factis in præſentibus facta non exiſtit, aut aliquibus Actibus ſive Ordinationibus in contrarium editis ſive ordinatis, aut aliqua alia cauſa, re, ſeu materia in aliquo non obſtantibus. In cujus rei teſtimonium has literas noſtras fieri fecimus patentes. Teſte me ipſo apud Maidſton viceſimo nono die Martii, Anno regni noſtri viceſimo quinto Authoritate Parliamenti.

Cuſtos Rotulorum,  
&c.

Of latter times in the grant of this office he is stiled Clericus \* parvæ bagæ, \* Belonging anciently to his office.  
Custos rotulorum, & domus Converterorum. See the Statute of 14 H.8. cap.8.

The Master of the Rolls hath in jure officii, the gift of the offices of Six Clerks in the Chancery.

In the absence of the Lord Chancellor he heareth causes and giveth orders: See in the third part of the Institutes, cap. Premunire.

## CAP. IX.

## The Court of Requests.

**H**AVING spoken of the Court of Chancery, swayed and governed by the Lord Chancellor, or Keeper of the Great Seal: It shall be fit in this place to treat of the Jurisdiction of the Court of Requests, wherein the Lord Privy Seal at his pleasure, and the Masters of Requests do assemble and sit. And the original institution hereof was, that such petitions as were exhibited to the King, and delivered to the Masters of the Requests, should be perused by them, and the party directed by them to take his remedy according to their case, either at the Common Law or in the Court of Chancery. And thereupon they were called Magistri à libellis supplicum: and in this respect this meeting and consultation was called the Court of Requests, as the Court of Audience and Faculties are called Courts, albeit they hold no plea of controverſie.

Those which in former times would have this Court to be a Court of judicature took their aim from a Court in France, which is called Curia eorum quos Requeſtrarum, i. supplicationum palatii magistros vocant, apud quos causa eorum tantum agitur, qui Regis obsequiis deputati, vel privilegio donati sunt: hujus Curie Judices octo sunt. But others taking this jurisdiction to be too narrow, contend to have it extend to all causes in equity equal with the Chancery, and their desires to be absolute and uncontrollable. But neither of these are warranted by Law, as shall evidently appear.

In the Reign of H. 8. the Masters of Requests thought (as they intended) to strengthen their jurisdiction by Commission, to hear and determine causes in equity. But those Commissions being not warranted by Law (for no Court of Equity can be raised by Commission) soon vanished for that it had neither Act of Parliament, nor prescription time out of mind of man to establish it.

\* Mich. 40 & 41 Eliz. In the Court of Common Pleas, upon a Bill exhibited in the Court of Requests against Flood, for default of answer an Attachment was awarded against Flood under the Privy Seal, to Stepney then Sheriff of Carnarvan, who by force of the said Writ attached Flood, and would not let him go, until he had entered into an Obligation to the Sheriff to appear before his Majesties Council in the Court of Requests: upon which Obligation the Sheriff brought an Action of debt for default of appearance, and all this matter appeared in pleading. And it was adjudged upon solemn argument, that this which was called a Court of Requests, or the White Hall, was no Court that had power of judicature, but all the proceedings thereupon were Coram non JUDGE, and the arrest of Flood was false imprisonment, so as he might avoid the bond by Dures at the Common Law, without aid of the Statute of 23 H. 6. cap. 10.

The punishment of Perjury in the Court of Whitehall by the Statutes of 33 H.8. cap.9. and 5 Eliz. cap.9. doth not give it any jurisdiction of judicature, no more then the Statutes that give against a Gaoler an action for an escape, or punisheth

See hereafter the Courts of Audience and Faculties, pa.

Cassaneus 7 part. fol. 136. b.

See before cap. Chancery. Perots case, pag. 87. See the Articles against Cardinal Woolsey, pag. 89. See Halls Chronicle ubi supra, and Guines learned preface to his Reading in the Inner Temple, about 16 El.

\* Tr. 40 El. in Comuni banco inter Stepney & Lloyd. Rot. 1157. See Halls Chron. 8 H.8. fol. 59. agreeth with the Law.



punisheth a Gaoler of his own wrong for extortion, an officer of his own wrong shall be punished by the Statutes in that case provided, and yet the Statutes thereby make them no lawful officers; for it is one thing to punish and another to give authority. So it was justice in the Parliaments to punish perjury in the Whitehall, although the Court were holden by usurpation, and so before it appeareth to be by the judgment in Stepneys case. See Beverlyes case lib.4. 123, 124. and the case of the Dyphans of London, Lib. 5. fol. 73. where it is called the Court of Requests, taking the same to be according to the Original institution. And as gold or silver may as currant money pass even with the proper Artificer, though it hath too much alloy, until he hath tried it with the Touchstone: even so this nominative Court may pass with the Learned as justifiable in respect of the outside by vulgar allowance, until he advisedly looketh into the roots of it, and try it by the rule of Law; as (to say the truth) I my self did: *But errores ad sua principia referre, est refellere, To bring errors to their first, is to see their last.*

The Author of the book of diversity of Courts written in 21 H.8. doth not so much as mention any such Court: nor the Doctor and Student who wrote in 23 H.8. treating of matters of equity never mentioneth any such Court: nor in any of the Reports of H. 8. or of any other before him, we find any mention made of any such Court. Herein, as in all other things, we have dealt clearly and plainly, upon what authorities and reasons we have grounded our opinion: and when we undertook to write, we resolved to publish nothing reluctant conscience, which we (by Gods special grace) have performed, without any spark of contradiction, or respect of any private whatsoever: That Charge ever sounding in mine ear, that is given to all that take upon them to write, *Ne quid falsum audeant, ne quid verum non audeant.* And although the Law be such as we have set down; yet in respect of the continuance that it hath had by permission, and of the number of decrees therein had, it were worthy of the wisdom of a Parliament, both for the establishment of things for the time past, and for some certain provision with reasonable limitations (if so it shall be thought convenient to that High Court) for the time to come: *Et sic liberavi animam meam.*

Error, qui non reficitur, approbatur.

Regula.

## CAP. X.

*The Court of Common Pleas.*

**B**y the Statute of Magna Carta ca. 11. it is provided, Quod communia placita non sequantur Curiam nostram, sed teneantur loco certo. Habet Rex etiam Curiam, & Justiciarios in banco residentes, qui cognoscunt de omnibus placitis, de quibus auctoritatem habent cognoscendi, & sine warranto jurisdictionem non habent nec coercionem. *Et paulo post.* Sunt etiam alii Justiciarii \* perpetui, certo loco residentes, sicut in Banco, loquelas omnes de quibus habent warrantum terminantes, qui omnes jurisdictionem habere incipiunt præstito sacramento. Mag. Cart. cap. 11.  
Bracton lib. 3.  
fol. 105. b.  
\* Ut sup. fol. 108. a

Oustre ceo voilons q̄ Justices demorgent continualment a Westm. ou ailors la, ou nous voudrons ordeiner, a pleader communes pleas solong; ceo que nous les manderons per nous breifs; isint que des parols deduces devant eux per nous briefes eyent record. Britton fol. 2.  
Vide Fleta lib. 2.  
cap. 2. & Lib. 1.  
cap. 54.

Out of these, thre things are to be observed: First what shall be said communia placita. They are not called communia placita in respect of the persons, but in respect of the quality of the Pleas. Regularly Pleas are divided into Pleas of the Crown, and into Common or Civil Pleas. Pleas of the Crown are Treason and Felony, and Misprision of treason and felony, &c. This Court is the lock and the key of the Common Law in Common Pleas, for herein are real actions, whereupon fines and recoveries (the Common assurances of the Realm) do pass, and all other real actions by Original Writs are to be determined, and also of all Common pleas mixt or personal: in divers of which, as it appeareth before in the Chapter of the Kings Bench, this Court and the Kings Bench have a concurrent authority.

\* Robert Parning the Kings Serjeant at Law 24 July 14 E. 3. was created Chief Justice of England, in which Office he remained until the 15 of December following, and then he was made Lord Treasurer of England; In which office he continued until the 15 year of E. 3. when he was made Lord Chancellor of England: and while he was Lord Chancellor, he would come and sit in this Court being the lock and key of the Common Law, as is aforesaid: and there debate matters in Law of greatest difficulty, as it appeareth in the report of the year of 17 E. 3. f. 11. 14. 23. 37, &c. knowing assuredly, that he that knows not the Common Law, can never rightly judge of matters in equity: whereof at that time very few matters were depending before him in Chancery.

2. These words of Bracton, [ sine warranto jurisdictionem non habent, ] are well expounded by Britton, that that Warrant is by the Kings Writs, Solong; ceo que nous les manderons per nous briefes. So as regularly this Court cannot hold any common plea in any action, real, personal, or mixt, but by Writ out of the Chancery, and retournable into this Court.

3. That in certain cases this Court may hold plea by Bill without any Writ in the Chancery, as for or against any officer, Minister, or privileged person of this Court.

Also this Court without any Writ may upon a suggestion grant prohibitions to keep, as well Temporal as Ecclesiastical Courts, within their bounds and jurisdiction, without any original or plea depending: for the Common Law which in those cases is a prohibition of it self stands in stead of an Original, whereof there be infinite precedents in this Court. And Sir Thomas Egerton 8 R. 2. Attachment sur prohib.  
pl. ultimo.  
9 H. 6. 61.  
10 E. 2. action sur  
lestat. 34.

Lord



Lord Chancellor Mich. 7 Jac. Regis called Fleming Chief Justice and all the Judges of the Kings Bench, and Tanfeild Chief Baron, and the rest of the Barons of the Exchequer, of whom the Chancellor demanded whether the Court of Common Pleas had authority to grant any prohibition without Writ of Attachment or plea depending: who upon mature deliberation unanimously resolved, that this Court might grant prohibitions upon suggestions without any Writ of Attachment or plea depending, for the reason aforesaid, and according to a multitude of precedents. The Justices of the Common Pleas were not called, because they had often resolved the point before. So as now this point concerning the jurisdiction of this Court for granting of prohibitions upon suggestions, where there is neither Writ of attachment, nor plea depending, is in peace, being resolved by the Justices of the Bench and of the Common Pleas, and by the Barons of the Exchequer.

See the 2. part of the institutes all these points.

4. This Court upon an adjournment upon a foreign voucher may hold plea likewise upon other foreign pleas, and upon general bastardy, Ne unques accouple in lawful matrimony &c. for none but the Kings Courts, and no inferior Court shall write to the Bishop. So likewise upon ancient demesne pleaded, &c.

\* So called the Common Bench in respect of the Common pleas there holden.

The Chief Justice of the Common Pleas is created by Letters Patents. Rex, &c. Sciatis quod constituimus dilectum & fidelem E. C. militem, capitalem Justiciarium \* de Communi banco. Habendum quamdiu nobis placuerit, cum vadiis & feodis ab antiquo debitis & consuetis. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.

And each of the Justices of this Court hath Letters Patents. Sciatis quod constituimus dilectum & fidelem P. W. militem unum Justiciariorum nostrorum de Communi banco, &c. But none can be constituted Judge of this Court unless he be Serjeant at Law of the degree of the Coif, and yet in the Letters Patents to them made, they are not named Serjeants.

The Jurisdiction of this Court is general, and extendeth throughout all England.

See the 2. part of the Institutes, Mag. Cart. cap. 11. 6 E. 3. 52. 39 E. 3. 24. 18 E. 3. Stat. 3.

For the antiquity of this Court see before in the Chapter of the Kings Bench adjoining thereunto, 6 E. 3. where a fine was levied in this Court 6 R. 1. and in 39 E. 3. a plea in this Court in 1 H. 3. And that I may speak once for all, the Justices of the Kings Bench, or of this Court of the Common Bench, that they observe the ancient rule of Law, Nemo duobus utatur officiis, for none of them can take any other office, or any fee, or reward but of the King only. And it were behoofeful to the Commonwealth and advancement of Justice and right, and preferment of well deserving men, if the like course were holden concerning all offices, as well Ecclesiastical as Temporal and Civil: and that no man following the example of the reverend Judges should enjoy two offices. For several offices were never instituted to be used by one man.

Term. Trin. An. 19 E. 1. in communi banco, Rot. 146. Rotel. in Thesaur.

The Jurisdiction of this Court for punishment of their Officers & Ministers. Petr. de Luffenham *indictatus quod ipse in Curia hic a die Sancti Hillarii in 15 dies An. Regni Regis nunc 19, falso & maliciose delevit adjournationem ejusdem essoin' ad diem illum intrati de com' Rotel. pro Rob' Attehale de South-Luffenham petente & Radul' de Kirkeby ten' de placito terra, &c. Et quesitus qualiter se velit inde acquietare, dicit quod in nullo est inde culpabilis, & de hoc ponit se super juram' de sociis in Cur' hic. Et qui jurati dicunt super Sacramentum suum, quod predictus Radolphus predictis die & anno fuit in Cur' hic, & dixit predicto Petro quod predictum essoinum fuit adjornat', & predictus Petrus intravit infra Bancum & rotulos de essoin', & cum perpendisset quod le aff. fuit appositum movit ipse policem suum & inde sotavit super le aff. quousq; illud fere omnino delevit ut sic faceret predictum Robert' amittere breve suum, &c. Ideo considerat' est quod predict' Petrus committitur Gaolæ de Fleete custodiend' per unum annum & unum diem pro falsitate & deceptione predictis, & tunc redimendus pro*



pro voluntate domini regis, &c. Et sciend' quod liberatus fuit Gaolæ die Mercurii prox' ante festum sanctæ Margaretæ virginis hoc anno, &c. Postea die Veneris prox' ante festum Sanctæ Margaretæ virginis Anno 20 deliberatus est prædictus Petrus, & inhibitum est ei, quod nihil habet nisi vestes pendentes in dorso, admittitur ad dimid' Marc. per 20 li. Wil. de Okeham, Ita tamen quod si ad plus sufficiat, &c. Justic' reservant eis potestatem, &c.

Et quia prædictus Johannes de Upton in Cur' hic recognovit quod hoc anno in æstate concessit quod prædictam defaltam remitteret, & pro illa concessione recepit 20 s. in Autumpno, & postea ad prædictam tertiam septimanam Sancti Michaelis idem Johannes remisit prædictam defaltam, per quam prædictus Willielmus recuperasse potuit prædictum ten' in fraudem & deceptionem prædicti Willielmi; Ideo ipse pro falsitate prædicta committitur Gaolæ de Fleet commoraturus per annum & diem, &c. per formam\* statuti, &c. Postea post annum & diem, &c. prædictus Johannes venit & deliberatus est secundum statutum, &c. et inhibitum est ei, &c. et finivit pro una marca.

Mich. 19 E.1. in Banco Rot. 191. Northampton.

W.1. cap. 29.

Bene examinatur fraus de Brevi in Jur' per Vic' retorn' Termin' Trin' & per quendam alium panellum ejusdem mutatum & contrefactum, unde contrefactor per Jur' est culpabilis, & adjudicatur Gaolæ de Fleete per annum & diem. Et quia scriptor ejusdem brevis licet de falsitate & malitia non fuit particeps, nec aliquid mali fecisse putavit, &c. Custodiatur, &c. & finem fecit per unam marcam.

Eodem Rot. nu. 210. London.

Et quia Rogerus de Langeport Attornatus est malæ famæ, & defutigavit Cur': Ideo committitur Gaolæ, &c. Et quæsitis rotulis de Indictamentis Attornatorum, &c. compertum est quod idem Rogerus indictatus fuit, quod ipse fuit conversus in cancell' & socius Adæ de Ponte fracto, quia falsavit sigillum Domini Regis, & falsa brevina composuit, &c. Et quæsitus qualiter se velit acquietare, dicit quod Clericus est, & non potest in Curia hic Domino Regi inde respondere. Et quia nullus ordinarius ipsum petit, &c. nec ipse Rogerus aliter se velit inde acquietare, Ideo ipse committitur Gaolæ quousque, &c. Et mittitur ad Turrim London, &c.

Hil 20 E.1. in Banco Rot. 109. Northampton.

The Officers of this Court are many, viz. Custos Brevium, tres Prothonotarii, thæe Prothonotaries: Clericus Warrantorum, Clerk of the Warrants: Clericus Argenti Regis, Clerk of the Kings Silver: quatuor Exigendarii, Exigencers: quatuordecem Falazarii, Filazers: Clericus Juratorum, Clerk of the Juries: Clericus Essoignorum, Clerk of the Essoignes: Clericus Utlagatorum, Clerk of the Outlawries: this belongs to the Office of the Attorney General, who exerciseth it by Deputy.

In former times great abuses have been by Attornies of this Court, by suing out a judicial Process without any Original, which when it hath been found out, it hath been severely punished; for many inconveniencies thereupon to follow. For example, in 20 H. 6. an Attorney of the Common Pleas had made a Capias directed to the Sheriff of Yorke, whereof there was no Original; at which day of the return an Attachment was awarded by the Court against the Attorney to answer the deceit, whereupon he was taken and examined, and confessed it, and thereupon by the Court he was committed to the Fleet, imprisoned for a moneth, and that his name should be drawn out of the Roll of Attornies, and never should be Attorney either in this Court or any other, and thereunto he was sworn. Note the severity of this Judgment doth shew the hainousness of the offence.

20 H. 6. 37. a. W.1. cap. 29.



17 E. 3. 51, 52.  
Nota he may be  
punished for the  
crime, and the  
party grieved  
may have his  
action.  
Pasch. 20 E. 1. in  
Banco Rot. post  
135.

An Attorney sued out an Habere facias seisinam against one, by force whereof the true tenant was put out of his freehold, where in truth there was no Record of any recovery: the party grieved brought an action of deceit against the Attorney, and recovered damages, and the Attorney imprisoned.

*Memorandum quod Magister Johannes Lovell qui fuit Custos Rotulorum & Brevium Domini Regis de Banco per manus suas proprias liberavit Johanni Bacon Clerico de mandato Domini Regis in hæc verba. Edwardus, &c. Dilecto Clerico suo Johanni Lovell Salutem. Cum Commiserimus dilecto Clerico nostro Johanni Bacon custod' Rotulorum & Brevium nostrorum de Banco; Habendum quamdiu nobis placuerit: Vobis mandamus quod eidem Johanni Rotulos & Brevia prædicta quæ sunt in custodia vestra ex commissione nostra per Chirographum inde inter vos & ipsum conficiend' sine dilatione liberetis custod' in forma prædicta. T. me ipso apud Stebenheth 17 Aprilis Anno Regni nostri 20.*

*Super quo prædictus Johannes liberavit dicto Johanni Bacon Rotulos & Brevia de Terminis Sancti Michaelis Anno 17, usque hunc Terminum, & similiter Rotulos de Esson'. Et scripta dedit & suspecta cum talleis dedit, una cum compotis dedit. Ac etiam 160. not' finium, duas ligulas de recordis sine die, & 14 Certificat' Episcoporum.*

## CAP. XI.

*The Court of Exchequer.*

**T**HE Authority of this Court is of original jurisdiction without any Commission. Of this Court Britton speaking in the Kings person saith. *a* Volons nous que a nous Eschekers a Westm<sup>3</sup> & ailors eyent nous *b* Treasurers, & nous *c* Barons illonques Jurisdiction & record de choses que touchent leur office a oier & determiner tous les causes que touchent nous debts, & auxi a nous fees, & les incident choses, sans les queux tiels choses ne purront estre tries, & que ilz eyent power a conuster de detts que lon doit a nous dettors per ou nous puissions pluis tost approcher a nostre dett.

*d* En droit des purprestures voilons nous que le noifances soient oustes aux costages des purprestours, & les sufferables soient prise in nostre maine a la value per an soit inrolle, & solonque le discretion des Treasurers & des Barons de nous Eschequers soient arenees a fee farma a eux que pluis voient doner.

*e* Et soit auxi enquis de nos customes de quirs & de leynes que les ount coilles, & combien les coillours ount bien suffert de passer de saches de leyne fauns payer custome, & combien eit valu la custome chescun au en chescun mannere de custome a nous appartenant & ceux articles soient terminees a nostre Eschequer selonc la discretion de nos Barons.

*See the Customers of Normandy, cap. 5. & 6. touching the Exchequer there, both of another Jurisdiction, and of other Judges, and Officers, then our Court of Exchequer is.*

Lescheker est un place quarre que solement est ordeine pur le prou le Roy ou deux Chivaliers. 2. Clerks, ou 2 homes, l'es sont assignes pur Oier & Terminer les torts faits al Roy & a sa corone en droit de ces fies & ces franchises, & les accounts des Bailiffs, & des receivors de deniers les Roy & des administrators de ces biens per la vieuve de une Sovereign quest *Treasurer de Anglittere*. Les dieux Chivaliers soloient estre appeles deux Barons pur afferer les amerciements de Counties, & des Barons & des tenants Counties & Baronies cy que nul ne fuit affere forsque per ces Piers.

A celle place estoit assigne un Seale ove garden pur fair ent acquittance de chescun payment que avoir le voloit, & de sealer les bres & les estrets south cere verte issant de celle place pur le prou le Roy. En celle place sont auxi Chamberleins & plusors auters ministres que ne touch my molt a la Ley.

Ordeine fuit Lescheker in manner come ensuist, & les paines pecuniels de Counties & Barons en certain, & auxi de tenants, Counties & \* Baronies dismemlies & que ceux amerciement fuissent afferred per les Barons del Eschequer, & que lein envoiait les estreets de leur amerciements al Exchequer ou que ilz fuissent amercies en la Court le Roy.

*f* Ouster ceo nul Common plea ne soit deformes tenus en Lescheker encounter la form de la grand Charter.

*g* Fleta (for Bracton treateth not of this Court) saith. Habet & Rex Curiam suam & Justiciarios suos residentes ad Scaccarium. And this is all I find in him.

This Court is divided into two parts, viz. judicial Accounts called Scaccarium computorum, and into the receipt of the Exchequer. *h* Una origo utriusque Scaccarii, superioris scilicet, & inferioris, sed quicquid in superiori computatur, in inferiori solvitur.

Before we observe any thing out of these ancient Authors and Acts of Parliament, it shall be necessary to set down the great Officers, the Judges, and other Officers and Ministers of this Court, as they be at this day.

*a* Britton fol. 2. b.  
*b* Nota, Treasurers in the plural number.

*c* Of ancient time they were Barons and Peers of the Realm, lib. nigro. Scaccar' parte 1. cap. 4.

See the 14 chap. of Mag. Cart. and the exposition of the same.

*d* Et fol. 29. b.

*e* Et fol. 38. b.

Mirror ca. 1. §. 14.  
*De la pace del Eschequer.*

Et cap. 1. §. 3.

\* This was in respect of the tenure, for all Earldoms and Baronies were holden in Capite.

23 E. 3. Ass. 120.

26 Ass. 37.

*f* Artic. sup. Cart.

cap. 4. 28 E. 1.

Stat. de Roteland.

10 E. 1. Reg. 187.

*g* Fleta li. 2. cap. 2.

*h* Ocham.



¶ The officers of  
the Court  
Rot. Pat. 13 R. 2.  
nu. 6 & 7.

Vide Rot. Pat.  
13 E. 3. part. 1.  
for this office.  
\* March. Paris  
18 H. 3. p. 391. &  
19 H. 3. ann. Dom.  
1234.  
And so was Tho.  
Wimondham.  
An. Dom. 1258.  
50 H. 3.

Rot. Brevium  
20 E. 2.  
a Archbishop  
Treasurer of the  
Exchequer.  
b Nota in dicto  
Scaccario.  
c Under-treasurer.  
d Treasurership of  
the Exchequer  
granted by Let-  
ters Patents.

Custos Regni.

Vid. The Lord  
Chancellors oath  
in the Chapter  
of the Chancery.

\* Lain is an old  
French word, to  
hide.

Fiscus in one sense is taken for the Exchequer, properly it is Sporta a Hamper, wherein the confiscations, settlements, and other monies of the King were carried into the Treasury.

1. Dominus Thesaurarius Angliæ: which office he hath at this day by the delivery of a white staffe, at the Kings will and pleasure. In former times he had this great office by delivery of the keys (golden keys) of the treasury: when treasure failed, the white staffe served to rest him upon it, or to drive away importunate suiters.

2. Thesaurarius Scaccarii, anciently called Arcarius ab arca, and this office he hath by Letters Patents. For both these offices he hath 365 l. fees, robes out of the Wardrobe 15 l. 7 s. 8 d. In toto 380 l. 7 s. 8 d. \* Hugo Patethul was first Treasurer of the Exchequer, and after Summus Thesaurarius.

Cancellarius Scaccarii, that keepeth the Seal. Sæ Pl. Com. 321. Lescchequer ad Chancellor & Seale, & les Bâres usuall in le Chancery in Lescchequer, &c. sont pluirs ancient que le Register. Sæ of the Chancelloz of the Exchequer hereafter in the Court of the Exchequer Chamber.

Capitalis Baro & Barones alii.

Subthesaurarius Scaccarii, anciently called Locum tenens Thesaurarii. Petrus de Willebye locum tenens Thesaurarii, Anno 30 E. 1. & plures alii: He nameth the two praifers of all the goods seised or not customed, and ordereth whether the party shall have them at the price or not, he appointed the Steward, Cook and Butler for the provision of the Star-chamber: he in the vacancy of the Treasurer doth all things in the Receipt, that the Treasurer doth. In the Statute of 39 El. c. 7. and 43 El. in the Subsidy of the Clergy he is called Under-treasurer of England. Concerning this matter I find of record this Writ following.

Edwardus Rex Angliæ & Dominus Hiberniæ Baronibus & Camerariis suis de Scaccario suo, Salutem. Quum pro eo quod a venerabilis pater W. Archiepiscopus Eborum nuper Thesaurarius Scaccarii prædicti, circa diversa negotia in partibus borealibus est occupatus, quo minus intendere possit ad ea quæ ad officium illud in dicto Scaccario pertinent exercendo, constituerimus venerabilem patrem Johannem Wintoniensem Episcopum c tenentem locum Thesaurarii Scaccarii prædicti, quousque de officio illo aliter duximus ordinandum, percipiendo in eodem officio (dum illud sic tenuerit) feudum consuetum, d prout in literis nostris patentibus præfato Episcopo inde confectis plenius continetur. Vobis mandamus quod ipsum Episcopum ad officium admittatis & ei in his quæ ad officium prædictum pertineant intendatis in forma prædicta. Teste Edwardo filio nostro primogenito Custode Regni nostri, apud Hereford Sexto die Novembris, Anno Regni nostri vicesimo.

The office and duty of the Lord Treasurer of England doth appear by his oath, which standeth upon eight Articles.

1. That well and truly he shall serve the King and his people in the office of Treasurer.

2. That he shall do right to all manner of people, poor and rich, of such things as concern his office.

3. The Kings treasure he shall truly keep and dispend.

4. He shall truly counsel the King.

5. The Kings Council he shall \* layn and keep.

6. That he shall neither know nor suffer the Kings hurt, nor his disheriting nor that the rights of the Crown be decreased by any mean, as far forth as he, may let it.

7. And if he may not let it, he shall make knowledge thereof clearly and expressly to the King with his true device and counsel.

8. And he shall do and purchase the Kings profit in all that he may reasonably do: which in effect agreeth with the oath of the Lord Chancellor, as you may read ubi supra.

Imprimis



Imprimis post sigillationem patentium de illo officio vocetur in curi Cancellarie, coram Domino Cancellario genibus flexis facit sacramentum, ut superius scribitur, & deinde sigillatum erit breve Regis directum Baronibus & Camerariis de Scaccario de attendenc' recitans effectum dictarum literarum patentium. Et inde recesserit dictus Dominus Cancellarius ad Curiam Scaccarii & ibidem (dicto Thesaurario stante) ad barram legantur literæ Patentes prædictæ & similiter prædictum b're, & vocatus est idem Thesaurarius ad locum suum per dictum Dominum Cancellarium accipiens cessum, & liberatæ erunt tunc & ibidem claves officii Thesaurarii, & omnes officarii sub se recedent cum ipso Thesaurario in Thesaurum & dantes ei attendenc'. This we have transcribed de verbo in verbum in eisdem verbis.

Forma constitutionis Thesaurarii Angliæ.

The Lord Treasurer of England hath also granted to him by Letters Patents under the Great Seal, Thesaurariam Scaccarii Regis Angliæ, which of ancient time was a distinct office by it self. The office of the Treasurer of the Exchequer did principally take care of the green war, sæs and tenures, as it is said; he hath also with the Barons the custody of records, as by the ensuing record appears.

Vid. Rot. Cartarum, anno 17 H. 3.

In an Information of intrusion in the Exchequer against Brace, judgment was given for the Queen against Brace, who brought a writ of Error directed to the Lord Chancellor and Lord Treasurer, and they made a warrant under their seals to the Barons to bring the record before them. And Manwood Chief Baron objected against both the writ and the warrant, for that the Statute of 31 E. 3. c. 12. that giveth this writ of Error is general, that the Lord Chancellor and Lord Treasurer shall cause to come before them the record and process of the Exchequer, and in as much as no special writ was given by the Statute, therefore the writ ought to be directed to them that have the keeping of the record according to the course of the Common Law.\* And for that the Treasurer of the Exchequer and Barons have the keeping of the Records of the Exchequer, the writ of Error ought to have been directed to them, and that the Lord Chancellor and Lord Treasurer of England are Judges in this case, and not the Treasurer of the Exchequer. And upon serch of presidents all the writs of Error from the making of the Statute until 7 E. 1. were directed to the Treasurer of the Exchequer, and Barons to bring the Record before the Lord Chancellor and Lord Treasurer: but in 7 E. 1. and since divers writs have been directed as this writ was, &c. But it was resolved by the Lord Chancellor, Lord Treasurer, and the two Chief Justices Assistants, that the writ ought to be directed to the Treasurer of the Exchequer and Barons that have the Record in their custody according to the ancient course and presidents, and thereupon this writ abated.

Hil. 25 F. l. Coram Baronibus.

Note the Statute speaketh of the Chancellor and Treasurer generally which is intended of the Treasurer of England, in digniori sensu.

See lib. 1. fol. 11. Sir William Pelhams case.

\* Note hereby it clearly appeareth that the Treasurer and Barons of the Exchequer are keepers of the records judicial of the Exchequer.

Vide 9 E. 3.

Here four things are to be observed. 1. That albeit the Barons, as hath been said, are the sole Judges, yet the Treasurer of the Exchequer is joyned with them in keeping of the Records, whereof the Barons are Judges, for they are parcel of the Kings Treasure. 2. That writs of Error are to be directed to them that have the custody of the Record wherein any judgment is given; as a writ of Error to reverse a judgment in the Court of Common Pleas, shall be directed to the Chief Justice only who hath the custody of the body of the Record wherein the judgment is given, but the original writ and warrant of Atturney are not in his custody. 3. That albeit the Lord Treasurer is also Treasurer of the Exchequer, yet the writ of Error is directed to him as Treasurer of the Exchequer, and the Barons, to have the Record before himself as Treasurer of England and the Chancellor. 4. That at the making of the Statute of 31 E. 3. that giveth the writ of Error, the offices of Treasurer of England and the Treasurer of the Exchequer were in several hands, as by the writs of Error brought soon after appeareth. Before the said Statute of 31 E. 3. the Errors in the Exchequer were sometimes examined in Parliament, and sometimes before Commissioners by force of the Kings writ under the Great Seal.

Par. 18 E. 2. n. 40. &c. Vid. 1 R. 2. nu. Sir William de la Pool's case. Mich 32 & 34 E. 1. Coram Rogero de Hefham & aliis Justiciariis, &c.

It was petitioned in Parliament in 22 E. 3. nu. 25. that erroneous judgments in



in the Exchequer might be reversed in the Kings Bench, but it succeeded not.

Vide Term. Pasch. 14 E. 3. a Writ directed to the Treasurer and Barons calling to them such Justices as they should think fit, to examine the Record, &c. of the judgment in the Exchequer, &c. for the Countess of Kent against the Abbot of Ramsey, upon which judgment the Abbot brought his Writ of Error. Fitzherbert for another purpose abridgeth the case, Tit. Scire fac. 122.

Hil. 11 E. 3. in libro rubeo in Scaccario fol. 322. the case of John de Lecestre Chamberlain of the Exchequer, a notable president to the like effect, Lege, quia optime.

Nota in the Act of 31 E. 3. that is called the Council Chamber, which now is called the Exchequer Chamber: because there was the assembly of all the Judges being the Kings Council for deciding of matters in Law.

1 part of the Institutes, cap. Grand Serjeanty, Sect. 153.

¶ The Chamberlains of the Exchequer. For these officers see in the first part of the Inst. lib. 2. cap. Grand Serjeanty. Sect. 153. the office mentioned in the Letters Patents is, Officium unius Camerarii de Recept Scaccarii, sive officium unius Camerarii de Scaccario, and is granted for term of life to be exercised by him or his Deputy. To this Office belongs the office of one of the *Wozekæpers* of the Receipt.

¶ Contrarotulator. Of so great regard is the right use of the Pipe, as there is a Controller thereof, which no other Office in this Court hath. And the Chancellor of the Exchequer is the Controller of the Pipe.

¶ Rememoratores 3. viz. Regis, Thesaurarii, & Primorum fructuum.

¶ Clericus Pipe. Of this Officer somewhat is necessary to be said. The original institution of this Court was taken from a Conduit or conveyance of water into a Cistern: for as water is conveyed from many Fountains and Springs by a Pipe into a Cistern of a house, and from thence into the several offices of the same: so this golden and silver stream is drawn from several Courts as fountains of justice, and other Springs of revenue reduced and collected into one Pipe, and by that conveyed into the Cistern of his Majesties Receipt, &c. Therefore all accounts and debts to the King are delivered and collected out of the offices of the Kings Remembrancer, and Treasurers Remembrancer, &c. and drawn down and put in charge in the Pipe. So as whatsoever is in charge in this Roll or Pipe, is said in Law to be duly in charge. The Clerk of the Pipe in the Patent of his office, is called *Ingrossator magni Rot.* in Scaccario.

See the Stat. of 5 R. 2. c. 14. Stat. 1. 26 All. p. 60.

Duly in charge.

The Annual or great Roll.

Duly in charge. The Roll of revenues.

5 Auditors. 1 H. 7. 4. a. 7 El. Dier 238. b. Sir Rich. Lees case.

Quamdiu se bene gesserit.

Also the Treasurers Remembrancer is by his office to charge and enter from the Original into the Annual, otherwise called the Great Roll, all *fe-farm* rents and other rents whatsoever upon leases of lands within the survey of this Court: and whatsoever is in charge in this Roll is said to be duly in charge. Also he ought to keep another Roll, commonly called a Roll of reversions, as of grants of lands and offices in tail, for life or years *absque compoto*, aut aliquid inde reddendo, to the end, as often as need shall require, Writs may be granted to enquire whether the issue be spent, the lessor dead, &c.

¶ There be five Auditors of the Kings revenues within the survey of this Court, and their office is to take the accounts of the Kings Receivers, Sheriffs, Elcheatores, Collectors, and Customers, and to audite and perfect them. But an Auditor cannot allow any license or grant, for the Auditor knoweth not whether the license or grant be good or no: but upon petition it ought to be allowed by the Barons who know the Law, & sic de similibus. Neither can the Auditor put any thing in charge, for his office is (as hath been said) but to take and audite accounts: for the words of the Patent be, *Concessimus B. officium unius Auditorum Scaccarii nostri quod J. S. nuper habuit & occupavit: Habendum & tenendum prædictum officium præfato B. quamdiu se bene gesserit in eodem per se vel sufficientem deput suum.* Nay, though the Barons do order upon sight of any Record or evidence, that any thing shall be put in charge, this is used to be done to bring it in question, but it is not in Law accounted to be duly in charge (until it be recovered, received, and accounted for of Record: for it is not judicially done,



done, because it may be done in the absence of the party. Neither can any Auditor make a Super, but of that that hath been received and accounted for before.

¶ Auditor of the Prests, take and audite the accounts of Ireland, Barwick, the Mint, and of any money imprested to any man.

¶ Auditor of the Receipts. First, He is a kind of Filazer, for he fileth the Tellers Bills and entreteth them. Secondly, He is a Remembrancer, for he giveth to the Lord Treasurer a Certificate of the money received the week before. Thirdly, He is an Auditor, for he maketh Debentures to every Teller before they pay any money, and taketh and auditeth their Accounts. Besides all these he keepeth the Black book of receipts, and the Lord Treasurers key of the Treasury, and locketh every Tellers money locked up in the new Treasury.

¶ Forinsec' Oppositor, the Forsein Opposer, he doth oppose all Sheriffs and Bailiffs of Liberties of their Green wax: under these words [ Green wax ] are included Fines, Illues and Amerciaments, Recognizances for the peace, Recognizances for appearance in any other Court, and good behaviour, and such like incertainties certified in several Scræts into the office of the Lord Treasurers Remembrancer, who delivereth the same to the Clerk of the Excheats to be put into Proces. And because the Excheats annexed to the Writ are under a Seal in green wax, they are vulgarly called Greenwar. But Felons goods, Waifs, Strays, Outlaws goods, Deodands, and such like, are within the Sheriffs accounts, with which the Escheator was wont to deal.

¶ Clericus Extractorum, Clerk of the Excheats, his office is partly touched before.

Here it may be demanded what the meaning of these words (of Excheats that sowne not) is. The Act of 4 H. 5. cap. 2. being original in French, is in proprio idiomate, *Des Excheats nient sownenn*, which by turning the two single v v into a w was first made sownenn, and afterwards sowne. Now sownenn properly signifieth to be remembred, and such casualties as are not to be remembred run not in demand, that is, are not leviable.

¶ Clericus Nihilorum maketh a Roll of all such sums as the Sheriff upon Proces for the Greenwar retourn Nihil, and delivereth that Roll into the office of the Lord Treasurers Remembrancer to have execution done of it for the King. See the Statute of 5 R. 2. cap. 13. Stat. 1. concerning these retourns of Nihil and the discharge thereof.

¶ Clericus Placitorum, Clerk of the Pleas. In this mans office all the officers and privileged persons in this Court are to sue and be sued. Of this matter more hereafter.

¶ Marefchallus, Marshal. To this officer the Court committeth the keeping of the Kings debtors during the sitting of the Term, to the end they may provide to pay the Kings debts, or else to be further imprisoned. Such Offices as are found Virtute officii, and brought into the Exchequer, are delivered to him, to be delivered over to the Lord Treasurers Remembrancer. He also appointeth Auditors to Sheriffs, Escheators, Customers, and Collectors for taking their accounts.

¶ Clericus Summonitionum, Clerk of the Summons.

¶ Deputati Camerarii duo, called Under-chamberlains of the Exchequer: they cleave the Tallies written by the Clerk of the Tallies, and read the same, that the Clerk of the Pell and the Controllers thereof may see their entries be true: they also search for all Records in the Treasury.

¶ Secundarii Rememoratoris Regis duo.

¶ Secundarii Rememoratoris Thesaurarii duo.

¶ Secundarii Pipæ duo.

In the other part of Exchequer which is called the Receipt. Concerning the course of the Receipt of the Exchequer, see Rot. Claus. 39 E. 3. m. 26.

¶ The two Chamberlaines. Of the duty of these officers see in the first part of the Institutes. Vide 51 H. 3. Stat. 5. 14 E. 3. cap. 14.

¶ Clericus Talliarum. There be two kind of Tallies or Tallies, the one is called

Green wax.

42 E. 3. cap. 9.  
7 H. 4. cap. 3.

See the stat. of  
Rotel. vers. finem.

Stat. 51 H. 3.  
statut. 5.

Rot. claus. 39 E. 3.  
memb. 26.  
first part of the  
Instit. Sect. 153.



<sup>a</sup> 1 R. 2. cap. 5.  
<sup>b</sup> 27 H. 8. cap. 11.  
 31 H. 8. cap. 16.  
 2 E. 6. cap. 4.

called a Tally of *a* debt, and the other is called a Tally of *b* reward; of both which you may read in divers Acts of Parliament.

¶ Clericus Pellis, Clerk of the Pele. His duty is to enter every Tellers bill into a Roll, called Pellis receptorum. His duty also is to enter in another Roll payments called Pellis exitus; and by what warrant the payment was made.

¶ Numeratores, 4 Tellers. The office of a Teller consisteth in four duties. 1. To receive monies due to the King. 2. To give to the Clerk Pellis receptorum a bill thereof, whereby he may be charged. 3. To pay to all persons monies by Warrant of the Auditor of the Receipt. 4. They make yearly and weekly books of their receipts and payments, which they deliver to the Lord Treasurer.

¶ Junctores talliorum duo.

¶ Deputati Camerarii duo.

¶ Custos Thesauriæ.

¶ Tabellarii Ordinarii 4.

¶ Scribæ duo.

¶ Officiarii Decimarum & Primitiarum.

Parl. 5 R. 2. cap. 16.  
 Stat. 1.

By the Statute of 5 R. 2. for making a Commission in the Exchequer, the Clerk shall not take for his fee above 2 s. only; nor for a Record of Nisi prius with the Writ but 2 s. only, as afore this time was wont to be done and used.

Vid. In the Office  
 of the Kings Remem-  
 brancer.  
 Mich. 26 H. 6.  
 Rot. 46.

See in the end of a book containing many little Books, as Fitzherberts Justice of Peace, Carta Feod, &c. the fees of the Offices of the Exchequer.

But it shall be necessary to set down the duties of the Kings Remembrancer, and of the Lord Treasurers Remembrancer.

The duty of the  
 Kings Remem-  
 brancer.

The office of the Kings Remembrancer consisteth principally in eight duties. His first is to write Proces against Collectors of Customs, Subsidies, and Fiftæns. 2. He entrech in his Office all Recognizances before the Barons, and taketh bonds for any of the Kings debts, for observing of orders, or for appearances, and his duty is to make out Proces upon every of them. 3. He maketh Proces upon Informations upon penal Statutes, all which Informations are entred in his office. 4. He maketh Wills of composition upon informations upon penal Statutes. 5. He taketh the stalment of debts and entrech them. 6. The Clerk of the Star-chamber certifieth into his office the fines let in the Star-chamber; this officer maketh a Record thereof, and draweth them down into the Pipe. 7. Into this office ought to be delivered to be safely kept, all Assurances, Conveyances, and Evidences, whereby any Lands, Tenements, Hereditaments, or other things are granted to the King. 8. Also there is a Court of Equity holden in the Exchequer Chamber by English Will: all the Wills and proceedings thereupon are entred in the office of this officer. See the Statute of 5 R. 2. cap. 14. Stat. 1.

The duties of the  
 Lord Treasurers  
 Remembrancer.

The office of the Lord Treasurers Remembrancer principally consisteth in eight duties. 1. His duty is to preserve the broad-spreading and fruitful tree of Tenures so many ways beneficial to the Crown, and the jurisdiction of the Court of Wards, which sometime were within the survey of this Court, but since taken from it. He maketh out Proces for the Kings revenue by reason of the tenures of the King (Wards excepted.) 2. He maketh Proces of Fieri fac<sup>t</sup> and Execut for debts due to the King either in the Pipe, or with the Auditors. If a Clerk of this Court make any Writ of Proces for a debt which hath been paid and the Tallies thereof joyned and allowed, he shall lose his office, and be imprisoned until he hath satisfied the party so much as by the discretion of the Treasurer and Barons he is endamaged. 3. He maketh Proces against all Sheriffs, Escheators, Receivers, and Bailiffs, to bring them to account. 4. To make an Entry of Record, whereby it appeareth whether Sheriffs and other Accountants pay their proffers due at Easter and Michaelmas. 5. He maketh another Entry of Record, to the end it may be known whether Sheriffs and other Accountants keep their days of prescription. 6. The Green-war is certified into his office, and are by him delivered to the Clerk of the Excheats, as  
 hath

See hereafter in  
 the Chapter of the  
 Court of Wards.  
 1 R. 2. cap. 5.



hath been said. 7. There ought to be brought into this Office all the accounts of Customers, Controulers, and all other accounts, to make thereof in this Office an entry of Record, to avoid all delay and concealment in the Kings business. 8. See the Statute of 5 R.2. cap. 14. Stat. 1.

Concerning these Officers there is an excellent Law made in 5 R.2. whereby it is enacted, [That from henceforth no Baron of the Exchequer, Clerk of the Pipe, Remembrancer, Opposer, Controuler, Clerk of the Pleas, and Clerk of the Forrein summons, Auditor, or other chief Officer of the Exchequer be made, unless he be well learned in the Law, or otherwise very skilful in the courtes and usages of the Exchequer.] Here is the heart-string of this Court, for albeit the Laws and Orders thereof be most excellent, yet the benefit thereof consists in good and skilful Officers and Ministers.

These things being understood, let us now peruse our ancient Authors, for out of the old fields must come the new Corn.

Eient nous Treasurers. Hereby it appeareth being in the Plural number, that there be two Treasurers, whereof we have spoken before. There is also a Treasurer of the Kings Chamber, Thesaurarius Cameræ Regis, which is not accountable in the Exchequer, but to the King himself. If the King appoint some whom he trusts to take his account, this is esteemed to be done by the King himself, Qui per alium facit, per ipsum facere videtur.

¶ Et nous Barons illonques jurisdiction. \* All judicial proceedings according to Law in the Exchequer, are coram Baronibus, and not coram Thesaurario & Baronibus: But the Court of Equity holden in the Exchequer Chamber is holden before the Lord Treasurer, Chancelor and Barons. Of this Court we have given a touch before, and shall treat more hereafter. Note the judicial proceedings before the Barons are in Rolls, but they are not numbred as in other Courts.

The Oath of the Barons of the Exchequer expressing their duties consisteth upon ten Articles. 1. That well and truly he shall serve in the Office of Baron of the Kings Exchequer. 2. That truly he shall charge and discharge all manner of people, as well poor as rich. 3. That for highness nor for riches, nor for hatred, nor estate of no manner of person or persons, nor for any deed, gift, nor promise of any person the which is made to him, nor by craft, nor by ingen he shall let the Kings right. 4. Nor none other persons right he shall disturb, let or respice contrary to the Laws of the Land. 5. Nor the Kings debts he shall put in respice, where that they may goodly be levied. 6. That the Kings need he shall speed before all others. 7. That neither for gift, wages, nor good deed, he shall \* layne, disturb, nor let the profit or reasonable advantage of the King in the advantage of any other person, nor of himself. 8. That nothing he shall take of any person for to do wrong or right, to delay or to deliver, or to delay the people that have to do before him; but as hastily as he may them goodly to deliver without hurt of the King, and having no regard to any profit that might thereof to him be therein, he shall make to be delivered. 9. Where he may know any wrong or prejudice to be done to the King, he shall put and do all his power and diligence that to redress; and if he may not do it, that he tell it to the King; or to them of his counsel, which may make relation to the King, if he may not come to him. 10. The Kings Counsel he shall keep and layne in all things.

In the Exchequer at the suit of the King in an Information of intrusion of Lands, wherein issue is joyned, which may be tried by the Country; yet where the King hath a direct Record or Records for the manifestation of his title, the Kings Attorney may pray that the trial may be by Records, whereof you may read a notable case, Mich. 27 & 28 Eliz. in the Exchequer where the case was, That in an Information of Intrusion into certain Lands, &c. against Savil, the issue was whether certain Lands belonged to a house or no, and upon a trial by Record Judgment was given against Savil. Afterwards Savil the defendant died, and his son and heir brought a Writ of Error in the Exchequer Chamber, where it was holden, that this kind of trial by Records was before the Statute of

Rot. Parl. 5 R.2. nu. 105. and worthy to be printed.

Rot. Parl. 3 H.6. nu. 47.

28 H.6. 11, 12.  
5 R.2. ca. 9. Stat. 1.  
20 E.3. cap. 2.  
The Court of Equity in the Exchequer Chamber.  
See hereafter, cap. 13. pag. 118. Rolls not numbred.

The Oath of the Barons.  
See the Statute of 20 E.3. cap. 2.

\* Layne, i. to conceal or hide.

Trial by Record.

Mich. 27 & 28 El.  
In Scaccar. inter le Roigne & Savil.

33 H.6. 10. 51, 52.

33 H.8.



For trial by Records, vid. Mich. 32 & 33 E. 1. coram Rege. Robertus Archiep. Cant. &c. Hil. 3 E. 2. coram Rege, Cornwall. Walterius Epif. Exon. &c.

33 H. 8. cap. 39. the words whereof be, That all and every trial and trials of [all manner of Suits, Bills, Plaints, Informations, &c. and Issues in the Court of Exchequer, shall be made and tried by due examination of Witnes, Writings, Proofs, or by such other ways or means, as by the Court of Exchequer shall be thought expedient; and that every such Judgment, Decree or Decrees, shall be good, perfect, and in full strength, force, and effect in Law, to all intents, constructions and purposes. And yet, notwithstanding the generality of these words, if a Judgment be given upon a trial by Record, a Writ of Error doth lye thereupon; because, as to that point, this Act is but in affirmance of the Common Law.

22 E. 3 nu. 17.

It was petitioned in Parliament, that remedy might be found, that no Accountant in the Exchequer do run in issues before he be warned. The Kings answer was, The Proces therein shall be first a *Venire fac'*, then a *Distringas*, and after a Writ out of the Chancery to the Treasurer and Barons.

31 E. 3 nu. 27.

It was also petitioned in Parliament, that such as owe to the King may upon their account be allowed of all such lones, as be due unto them, or to any of his Ancestors: whereunto the King answered, The Treasurer and Barons shall make allowance of due debts.

5 R. 2. cap. 9. Course of the Exchequer against Law, &c.

So great care was taken by the Court of the Exchequer (which is the centre of the Kings revenue and profit) that no man might sue or plead for their discharge of any debts, account, or other demand, without having express commandment by Writ or Letter of the Great Seal. But by the Statute of 5 R. 2. it appeared, that the parties ought to have been received thereunto, according to the Law, without any such Writ or Letter: and that the obtaining of such Writs or Letters, was to the great disquietness, mischief, and delay of the parties impeached, and no advantage to the King. And where before that time no plea could be allowed in the Exchequer by Attorney, but in proper person: by the said Act it is ordained that the Barons of the Exchequer shall have full power to hear every answer of every demand made in the same: so that every person that is impeached or impeachable of any cause by himself, or by \* any person, shall be received in the Exchequer, to plead, sue, and have his reasonable discharge without carrying or suing any Writ or other commandment whatsoever. So as by this Act both these mischiefs are provided for. And out of this Act this general conclusion may be justly collected, that such course of the Exchequer as tendeth to the disquietness, mischief, and delay of the Subject, and no advantage to the King, is against Law, and ought not to be allowed. And it is to be observed, that Britton doth joyn in this clause, The Treasurers and Barons.

\* That is, by his Attorney: and therefore the admittance of an Attorney in these cases, is not *ex gratia curie* (as is laid in the common pleading) but *ex debito iustitiæ*.

a *Tempore regis Johannis*, the Abbot of Crowlands case. *Iusticiarii hec audientes argentes de Banco, cum Baronibus Scaccarii &*

*Domini regis fidelibus illic residentibus colloquium, &c. Rot. in Scaccario de Crowland. Pl. Corone coram Iustic. Itinerantibus apud Turrem London. An. 4 E. 1. Rot. Claus. 13 E. 1. infra p. 121. Hil. 32 E. 1. Coram Rege wigorn. Mic. 6 E. 2. in Communi Banco Despenchers case. Mic. 11 E. 2. Coram Rege the case of the Burgeses of Great Yarmouth.*

4 H. 6. 12. b.

5 E. 4. 7.

7 E. 4. 14. b. 16. b.

¶ A Oier & Terminer tous les causes que touchent nous debts. Here debts are taken for all manner of duties due to the King.

¶ Et auxi a nous fees. Here the tenures of the King (whereof we have spoken before) are expressed. And albeit there be many tenures of the King both in Capite, and by Knights Service of some Honour or Mannor, &c. yet there be many more by the error or negligence of Solicitors, by suing out of licences or pardons of alienation, where in troth the Mannors or Lands were not holden of the King in Capite.

Mich. 39 & 40 El. Pour tous les Ju-

¶ Fut Mich. 39 & 40 Eliz. it was resolved by all the Judges of England, when I was Attorney General: That if a man purchase a Licence or Pardon, and after being called into the Exchequer do plead the Licence or Pardon,



don, that neither the purchase nor pleading is any conclusion, but the tenure may afterwards upon another alienation be traversed or denied. For the words of the Licence or Pardon be, *Quæ de nobis tenentur in capite* (ut dicitur;) for neither the charge in this case is direct, being grounded upon a Licence or Pardon, nor the plea; for the Licence or Pardon is pleaded, as it is, ut dicitur: and therefore neither the one nor the other doth conclude. But if he in his plea doth by express words (with a bene & verum est &c.) confess a tenure, in Capite, and in discharge thereof plead the Pardon or Licence in discharge thereof, there is a conclusion wrought: and so are the books to be intended: which resolution I heard and observed, and have reported it for advancement of truth and right.

Concerning Licences of Alienation, and the short pleading of Licences and Pardons, there is a profitable Statute made Anno 18 Jac. Regis, and another Anno 1 Jac. cap. 26. concerning orders of the Exchequer.

¶ Et les incident choses sans les queux, &c. Quando lex aliquid alicui concedit, concedere videtur & id sine quo res ipsa esse non potest.

¶ Et que ils eyent power a consuier des detts que lendoit a nous dettors per ou nous puissions plus tost approcher a nostre dett. This is the ancient prerogative of the King, as it appeareth in our books.

The King brought an Action of debt in this Court against a Prior Alien. The Prior had Proses against A. who detained goods from him, without which he could not answer the King. A. came and claimed the goods as his tithes as Parson of D. the Prior claimed the tithes as Parson of S. and thereupon issue taken for the King triable in the Exchequer.

If he that is in execution will in this Court confess himself debtor to the King, where he is no debtor of Record, he shall be remanded to the first prison, and after the creditor be satisfied, then to be committed unto the Fleet until he hath paid the sum confessed.

¶ Solong; le discretion des Treasurers & Barons, &c. soient a rents a ferme a eux que plus voillent doner. To the end that no Lands in the Kings hands, which ought to be to the Kings profit, should be without a Farmor that should yield a rent to the King, the Treasurer in certain cases, and with certain cautions ought to make a Warrant to the Great Seal for demising thereof, that is to say, not only of Lands extended, of Lands during the vacation of any Abbey, and of Lands seized for an Alienation without Licence, and before 23 H. 8. of Land in Ward, or the like upon uncertainties, but also of the demans of the Crown out of Lease, &c.

The Lease will be best expressed by an example, first of Lands extended. Rex omnibus ad quos &c. Salutem. Sciatis quod per manucaptionem Walteri Mathew de Westm in Corn Mid' Yeoman, & Nich. Whitfield de eadem, Yeoman. Commissarius Ricó Foster, custodiam unius shopæ, 30 acr terræ, 3 acr prati, & 4 acr pasturæ cum pertin in Stanford in corn Lincoln, quæ fuerunt Silvani Southorpe, quæ in manus Regis Edwardi nuper Regis Angliæ tertii pro 138 li. 6 s. 8 d. in quibus idem Silvanus præfatus nuper regi tenebat, seisciti fuerunt, & in manibus nostris ea de causa adhuc existunt. Habendum à festo Sancti Michaelis Anno regni nostri 13 usque finem 10 annorum ex tunc proxime sequen & plenarie complendorum. Reddendo inde nobis per annum in custodia prædicta 25 s. prout nobis responsum est, ad festa Paschæ, & Sancti Michael' per æquales portiones. Provisio semper quod si aliquis alius dare voluerit de incremento per annum pro custodia prædicta sine fraude vel malo ingenio, quod tunc dictus Richardus tantum pro eadem solvere teneatur, si custodiam prædictam habere voluerit. In cuius rei, &c. Teste R. apud Westm. 7 die Novemb. Anno regni nostri decimo sexto.

In Original:

Anno 16 E.4.

Rot. 12.

Nota herein five things.

1. Per manucaptionem.

2. Commissarius.

3. Custodiam.

4. Yielding a rent.

5. Provisio, quod si quis alius plus dare voluerit.

Nota Britton sup.

A eux que plus voillent doner.

See 27 H.8. ca. 11.

Note by many presidents the Lord Treasurer may make a Warrant to grant the Lands extended, either for years, or quam diu in manibus nostris fore contigerit.

The Lord Treasurer made a Warrant to the Lord Chancellor to demise to Rot. pat. 5 H.6. John Pempons Land parcel of the Duchy of Cornwall for the term of fifteen



11 H.6.28.b.  
8 H.6.34 Br.  
Lease 71.  
Register 295.  
See for this word  
Commisimus.  
Vide 27 H.8.  
ca.1. a special  
Proviso for the  
Lo. Treasurer.  
\* 32 H.6. ca.5.  
17 R.2. cap.5.  
4 H.4. cap.18.  
Dier fo. 3.3.

See in the Chapter  
of the Court of  
Wards

\* Vid. Pl. Co. 491.  
\* Hil. 18 E.1. f.9.  
nu.128.

Second part of the  
nst. Confir. Cart.  
id. supra cap.  
1 arl. p.29.

v  
p

Mirror.  
Ockham.

2 E.3.25.  
Rot. Par. 31 E.1.  
m.12. Dorf.

Nora, the robbery  
of the King of his  
treasure is *damnum*  
*inestimabile*.

a 2 E.3.25. Jeffe-  
ry Sharlags case.  
14 E.3. tit. Scire  
fac' 122. 44 E.3.  
27. Regist. 187.b.  
Prohibit. 38. aff.  
p.20. Rot. Par.  
1 R 2 nu.64.  
2 H.4.11.  
Rot. Par. 2 H.4. 101  
Dat' est nobis in-  
telligi.  
Rot. Par. 11 H.4.  
54.56.64. ibid.  
13 H.4.32.  
8 H.5. Ley 66.  
20 E.3. Ley 52.  
32 H.6.24.  
5 E.4.4.b. 7 E.4.30.  
21 E.4. 44.45. &c.  
8 H.6.34. 36 H.6.26. Li.5. f. 62. action sur le case. 11 H.7.26. b Stat. de Rutland. 10 E.1. \* Register 187.  
F.N.B.50.f. Information de intrusion ou trans & 217.c. terra taile. Vid. 32 H.8. cap.39. 16 Eliz. Dier 328. c 14 E.3.  
breve 789. 20 E.3. Ley 52. 2 H.4.9. 8 H.5.6.10. 8 H.5. Ley 66. 11 H.7.26. Pl. Com. 322. Lib.6. fol.18. d 1 R.3.  
cap.14. 5 R.2. cap.9. Stat. 15. the Barons shall hear, &c. without any writ, letter or commandment. 4 H.4. cap.9.  
7 H.4. cap.11. concerning Commissions. 13 Eliz. cap.9. Sewers. 14 E.3. ca.12. Weights. 13 R.2. cap.2. No recog-  
nizance or bond in double.

years in the like form of words as the before recited Lease was. This Lease was pleaded in 11 H.6. and though the Lease was by the words of Commisimus, and Commisimus custodiam terræ, &c. yet in pleading the Lessee pleaded a demise of the Land it self, and there allowed to be good, which is worthy of observation.

Vide in Original' in Scaccario de Anno 21 & 22 H.7. Rot. 4. & ibid. 23 H.7. Rot. 12. many such Leases. But of ancient time, as it appeareth by Britton, both the Treasurer and Barons did demise, &c. \* Letters Patents of the Alnage Hall pass only by the Lord Treasurers Warrant. And the gift of the office of the Escheator belongs to his office. Vide in Chapter of the Court of Escheator.

By the Statutes of 8 H.6. cap.16. and 18 H.6. cap.6. it appeareth that the Chancellor or Treasurer had power to make Leases in certain cases of Wards Lands: but that is altered by the Statute of 32 H.8. of erection of the Court of Wards. \* Note the Statute of 18 H.6. cap.1. extends only to the Kings Warrant and not to the Warrant of the Lord Treasurer.

\* It is to be observed, that when in any Act of Parliament, or other Record, the Treasurer is named for demising, or other intermeddling with any of the Kings Revenue, it is to be intended of the Treasurer of the Exchequer.

¶ De nous customs de quirs & leynes, &c. What these customs were appeareth in the Second part of the Institutes, by the Statute of Confirmation Cartarum, the last branch, and the Exposition upon the same, whereby it appeareth that the King had no Custom but such as was granted to him by Act of Parliament.

¶ L'Eschequer est un place quarre. It is foursquare, and the Carpet that sometime lay upon it had wrought in it the form of a Chess board, and thereupon it was called the Exchequer: and about the end of the reign of E. 1. this Court was new built, and therefore in 2 E.3. it was called the novel Exchequer, and it was new built upon this occasion. Both the parts of the Exchequer were of ancient building, and weak; Fourscore and one persons (whereof the Abbot of Westminster, and forty eight of his Monks were part) brake into the Receipt, and feloniously robbed the King of a hundred thousand pounds, ad damnum inestimabile, saith the Record. All these fourscore and one were indicted of this Felony, and committed to the Tower of London, &c. and this was the occasion of the new building of both these parts of the Exchequer.

¶ Qui solement est ordeine pur le prowe le Roy. Here is a short but an effectual description of the Jurisdiction of this Court, that is, for the profit of the King. This profit is either immediate, or mediate: a Immediate, as of Lands, rents, franchises, hereditaments, debts, duties, accounts, goods, chattels, and other profits and benefits whatsoever due to the King. b Mediate, as first, the privilege of the Officers and Ministers of the Court: for two things do principally support the Jurisdiction of a Court, viz. the just preservation of the dignity of it, and the due attendance of the Officers and Ministers of the same to sue and be sued in this Court. 2. c By Quo minus. 3. It extendeth (as hath been said) to the debtor of the Kings debtor. 4. To prisoners in this Court to be sued here. 5. To accountants that have entered into their account, except d Collectors of Dismes, they shall not be sued by bills, neither if he be sued in any other Court, shall he have the privilege of this Court.

¶ Ou deux Chivaliers, & 2 Clerkes, ou 2 homes lettres. 2. Chivaliers be hereafter explained. 2 Clerks, ou 2 homes lettres, the one is intended to be the Baron of Course, the other the Clerk of the Pipe.



¶ De ses fees & franchises. Of fees, that is, tentures, whereof we have spoken before. Franchises, being flowers of the Crown, are notorious and known.

¶ Et les accounts, &c. All accounts to the King ought to be made upon oath, and it is best for the King to have the accounts to be taken in this Court, for accounts taken by Commission are little for the Kings benefit. *a* The Keeper of the Wardrobe is to make his account once in the year in the Exchequer. *b* Once in the year the Treasurer of Ireland shall account in the Exchequer of England. *c* The accounts of the Exchequer to be more shortly heard, made and ingrossed, &c.

*a* Stat. de Rutland.  
101.

*b* Rot. Par. 21 E. 1.  
Rot. 3.

*c* 5 R. 2. cap. 11.

*d* The Treasurers of the Kings Chamber are only accountable to the King, and not in this Court of Exchequer, but yet the King, by the advice of some whom he may trust in secret doth take account thereof, as before is said.

*d* Rot. Par. 3 H. 6.  
nu. 47.

Vide recordum & Processum contra Petrum de Rivalles alias Petrum de Oriall, Thesaurarium & Camerarium Regis totius Angliæ & Hiberniæ, & custodem omnium forestarum, & omnium portuum maris de compoto redditus de officiis predictis, & de judicio contra ipsum reddito per defaultam, quia venire recusavit nisi salvo Regis conductu, quod Rex denegavit, quasi insolitum & indebitum.

18 H 3. nu. 110.

¶ Per le view de un Sovereign que est Treasurer Denglitterre. Of this great Officer we have spoken before.

¶ Le 2 Chivaliers soloient ée 2 Barons, &c. And herewith agreeth Bracton, Comitibus vero vel Barones non sunt amerciandi, nisi per pares suos secundum modum delicti, & hoc per Barones de Scaccario vel coram Rege.

Bracton lib. 3. fol.  
116. b.

See the 2. part of  
the Inst. Mag.  
Carta. 14.

¶ En cel place sont auxi Chamberleins, & plusors auters ministers, que ne touch my molt a la Ley. Whereof we have spoken before.

¶ Nul Common plea ne soit disformes tenu in Leschequer encontre le form del Grand Charter. Upon this Act Four several opinions have been conceived.

1. That this Court might originally have holden plea of all Common pleas; and this they think to prove by the title of Glanvils book, which taking it altogether is this. Tractatus de legibus, &c. tempore Henrici 2. compositus, justitiæ gubernacula tenente illustri viro Ranulpho de Glanvilla, juris Regni & antiquarum consuetudinum eo tempore peritissimo, & illas solum leges continet & consuetudines, secundum quas placitatur in Curia Regis ad Scaccarium coram Justiciariis ubicunque fuerint. 2. Others think that at the making of Magna Carta the Court of the Exchequer was parcel of the Kings Bench, which they infer upon the words of this Act, No Common plea shall be holden in the Eschequer against the great Charter, In which Charter Curia nostra is only intended of the Kings Bench. 3. That in Magna Carta, to which this Statute refers, there is no restraint, and therefore this Statute of Artic' super Cartas restraineth not. 4. That the Ordinance of Rutland is no Statute, but made by the King for the order of this Court. In the Second part of the Institutes, in the Exposition of Magna Carta, cap. 11. we have spoken nothing of this matter, but thought good to refer it to this Act being his proper place.

Artic. sup. Cart.  
Ubi supra. Stat.  
de Rutland.

10 E. 1. acc.

\* Pl. Com. 209.

As to the first: It appeareth by the said ancient Authors, and by the authority of our books, that the Institution and jurisdiction of this Court have been only for the Kings business and profit, &c. as hath been said. For the Title of Glanvils book: First, It was never of his own making, for he would never have given himself such high and superlative Titles, as Illustri viro juris Regni, &c. eo tempore peritissimo. 2. He that added the title speaketh of these Courts, viz. 1. In Curia Regis. 2. Ad Scaccarium. 3. Coram Justiciariis ubicunque fuerint. For the first, viz. in Curia Regis, he intendeth Justice in Eyre, &c. for example. Inquirentur purprestura vel in Capitali Curia, vel coram Justiciis Regis ad tales Inquisitiones faciend' in diversas Regni partes transmissas per Juratam patriæ sive vicinæ. 2. Ad Scaccarium, this Court he doth mention but once (that I remember in all his book in these words. Si vero Dominus Rex aliquam custodiam alicui commiserit, tunc distinguitur utrum ei custodiam pleno jure commiserit ita quod nullum eum inde reddere compotum oporteat ad Scaccarium, which

Glanv. lib. 5.  
cap. 11. &c.

Lib. 7. cap. 10.

agreeth



agreeth with the original institution and jurisdiction of the Court concerning the profit of the King. 3. Coram Justiciariis ubicunque fuerint is the Kings Bench, whereof Glanvil was Chief Justice, and of the Pleas in that Court is in effect the sum of his Treatise.

\* The Author of this book is Ger-  
vasius Tilburienſis  
a learned man and  
an Officer of the  
Exchequer cap. 1.

As to the second: 1. Glanville who wrote in the Reign of H. 2. doth (as hath been said) name the Exchequer as a distinct Court for the accounts to be made to the King. 2. In the \* Black Book of the Exchequer dedicated to H. 2. of the observations of the Exchequer, it is said, Nulli licet statuta Scaccarii infringere vel eis quavis temeritate resistere, habet in hoc commune cum ipsa Domini Regis Curia, in qua ipse in propria persona jura discernit, nec recordationi nec sententiæ in eo lata liceat alicui contradicere. Whereby it appears that the Kings Bench and Exchequer were distinct Courts in the Reign of H. 2.

Regist. 187. b.

To the third, our Statute is intituled Articuli super Cart, that is, Articles upon Magna Carta & Carta de Foresta: so as the sense of this Act is, that the Exchequer should hold no common plea no more then the Kings Bench: for the form of the Great Charter is, Quod communia placita non sequantur Curiam nostram. Secondly, our Statute is but an affirmance of the Common Law concerning the jurisdiction of this Court, and this doth expressly and notably appear in the Register in these words. Rex Thesaurar & Baronibus de Scaccario Salutem. Cum secundum legem & consuetudinem Regni nostri communia placita coram vobis ad Scaccarium prædict' placitari non debeant, nisi placita illa nos vel aliquem ministrorum nostrorum ejusdem Scaccarii specialiter tangant, &c. Here it is to be observed that this Writ of prohibition is not grounded upon the Statute of Artic' super Cart' or any other Statute, but upon the Common Law and custom of the Kingdom, which concerning the jurisdiction of this Court doth in omnibus agree with our ancient Authors and Year-books, wherein you shall observe an admirable harmony and consent in so many successions of ages.

Stat. de Rotland.  
10 E. 1. Vid. Pl.  
Com. 221. per  
2 Barons. Regist.  
187. b.

Respondeat superior.  
Inc' Præcept' de  
Termino Sancti  
Hil. Anno 14 E. 3.  
ex parte Remem.  
Regis Rot. 9. in  
Scac. Coronator.

This is a Statute provided by the title thereof, and for that it is entred in the Parliament Roll, and in the Register 187. b. it is called Statutum de Rotland.

Now it is good to know, how the Law commonly called Respondeat superior, holdeth in this Court and in other Courts, and first by the Records of this Court, and then by Acts of Parliament.

Memorand' quod allocuto præfato Willielmo morantur nuper Vic' super levatione 40 s. extract' in magno Rotulo de anno 12 in Kanc' sub nomine William Herlizan unius Coronatorum Com' Kanc' pro falso retorno. Idem Willielmus Vic' dic' super sacramentum suum quod præfatus Willielmus Herlizan non habet terr' vel tenita, bona, seu catalla in balliva sua, nec habuit unde dict' denar' levare possint. Et quia ipse Coronator electus erat per Comitatum juxta formam statuti, &c. ita quod in defectu ejusdem Coronator' totus Comitatus ut elector & superior, &c. habeant Regi respondere, præcip' nunc Vic' quod de terris & tenementis hujusmodi totius comitatus in balliva sua fieri fac' prædict' xl s. & eos habeat hic in C'ro clausi Paschæ super proffrum suum Regi solvend'. Ad quem dicm Vic' non retorn' breve. Ideo sicut alias in C'ro Sancti Johan Baptistæ. For more presidents in the Exchequer of this kind, see Mic. 17 R. 2. Rot. Mich. 19 H. 8. Rot. 4. Eborum. Pasch. 30 H. 8. Rot. 30. Wiltes. Mich. 5 E. 6. Rot. 130. &c. Stat. de 52 H. 3. de Scaccario.

How it holdeth in other Courts, Vid. 11 E. 2. tit. det. 172. where the Sheriffs be removable as in London for their insufficiency, respondeat superior, that is, the Mayor and Commonalty of London.

45 E. 3. 9, 10. Prior datife & removeable suffer eschape, respondeat superior. 14 E. 4. Pur insufficiency del Bailie dun libertie respondeat Dominus libertatis. Vid. 44 E. 3. 13. 50 E. 3. 5. 14 H. 4. 22. 11 H. 6. 52. 30 H. 6. 32. W. 2. cap. 2. Si non habeat Balivus unde reddat, reddat superior.

2 H. 6. cap. 10.

There is a general Statute concerning all the Courts of the King, worthy of observation in these words.

Item,



*Item,* To the intent that better and more sure Government be had within the Courts of our Lord the King for his profit, and ease of his people, which have to pursue, and do in the same. It is ordained and established that all the Officers made by the Kings Letters Patents Royal within the said Courts, which have power and authority by vertue of their offices of old times accustomed, to appoint Clerks and Ministers within the same Courts, shall be charged and sworn to appoint such Clerks and Ministers, for whom they will answer at their peril, which be sufficient, faithful, and attending to that which pertaineth to them in performance of the business, as well of the King, as of his people.

In the same manner we have ordained in the right of the Barons of the Exchequer, and we have expressly charged them in our presence, that they shall do right and reason to all our subjects, great and small, and that they shall deliver the people reasonably and without delay of the business which they have to do before them, without undue tarrying as hath been done in times past.

It was resolved in the case of Auditor Povie, that if A. be indebted to B. and B. is indebted to the King, that the King by his prerogative may levy his debt upon A. but this levying ought to be of an immediate, and not of a mediate debtor to the debtor of the King. As if A. be indebted to B. and B. to C. and C. to the King, the King cannot levy his debt of A. for then it might be levied in infinitum, quod reprobatur in jure, and this appeareth in our books.

For assignment of debts made to the King, see in my Reports.

By the Statute of 7 Jac. no debt shall be assigned to the King his heirs or successors by or from any debtor or Accountant to his Majesty, his heirs or successors, other then such debts as did before grow due originally to the Kings debtor.

No obligation, recognizance or Statute made for saving harmless or performance of Covenants, &c. though it be forfeited, or for any cause, other then a due debt, can be assigned to the King by any of his debtors. These assignments of debts to the King are not favoured in Law when the Kings immediate debtor is able to pay his debt: for by the assignment at the Kings suit, the body, lands and goods of the debtor to the Kings debtor are liable to the King, whereas at the subjects suit, he could have had but his body only by Capias ad satisfaciend, or his goods only by Fieri fac, or half his lands and goods by Elegit. By the Statute of 1 R. 2. a penalty is provided for him who confesseth a debt to the King (that is not debtor to the King of record) to delay the execution of others.

The Barons of the Exchequer are the sovereign Auditors of England, for if a man assign Auditors to a Bailif or receiver to account, and the Auditors will not allow just and reasonable allowances but commit the Bailif or receiver to prison, such prisoner may have an original Writ of Ex parte talis returnable before the Treasurer and Barons of the Exchequer, &c. for his relief in that behalf.

Upon the Accountant in the Exchequer of B. Fulham the Kings Butler, he demanded allowance of certain parcels of wines given by the King to certain persons by word of mouth without writing, and it was disallowed by the rule of the Court.

Upon the account in the Exchequer of Richard Bury Keeper of the Wardrobe, he demanded allowance for certain Vessels of gold and silver, and certain Jewels given by the King or tenus to Isabell Queen of England, and others to Philip Queen of England Consort of the King, & non allocatur by the like rule of the Court: for the gifts by word in both these cases are void, which with Petitioners case that followeth are good rules to establish the Law in a case wherein there hath been variety of opinions in our books.

20 E. 3. cap. 2.  
Hereby it appeareth that to them belongeth doing of right and reason in legal proceedings.

Mich. 13 Jac. In Bank le Roy in Prohibition.  
8 H. 5. 4. 45 E. 3.  
Decies tantum 12.

Lib. 5. fol. 89, 90.  
7 Jac. cap. 15.

1 R. 2. cap. 12.  
Fleta. l. 6. cap. 64.  
2 E. 3. 12. 14 E. 3.  
account 74.  
8 E. 4. 16. 1. N. B.  
129. f. Regist. 137.

Rot. Claus. anno  
4 E. 3. m. 2.

Rot. Claus. anno  
4 E. 3. m. 19.

35 H. 3. Prærog. B.  
61. 14 E. 4. 2. 2.

Hil.



Hil. 6 E.4. Rot.14. in Scaccario Inter Brevia in Dorf. Petilians case. A warrant under the Signet is not sufficient to issue any Treasure of the King out of the Receipt, but it must be under the Great or Privy Seal.

Regist. 192. a.b.  
& 193.

If the Barons do not allow unto an Accountant before them such just demands as he maketh, he may have a *Writ De allocatione facienda*, directed to the Treasurer and Barons, commanding them to allow the same.

*Of a Liberate for payment of a pension or debt, &c.*

A Liberate is an original Writ issuing out of the Chancery, and is directed to some Officers that have of the Kings money in his hands to pay over a pension, debt, or duty. And it is not called a Liberate by reason of any such word contained in the Writ, (as for the most part Writs are) for the words be *Quod solvas* or *solvatis*, but it is so named ab effectu. But such a Writ cannot be directed to the Kings Fermor to pay a pension, &c. because, though the ferm or rent be behind, yet it is not the Kings until it be paid, and all the Writs in the Register are directed as is aforesaid to Officers, as to the Treasurer and Chamberlain, to a Customer, &c. The form of the Writ appeareth in the Regist. 192, 193. And there it appeareth that there be two kinds of Writs of Liberate, one doth mant or currant and continual, and another hac vice and particular. And it is sometimes accompanied with a Writ of Allowance, as there you may read.

If the Officer have sufficient in his hand to pay, &c. at the time of the Liberate delivered to him, he is become debtor (by Act of Law) to the party, for which he may have an action of debt: but after the Liberate sued out, and before the delivery, the King may discharge the Officer of the Kings money in his hands. And if the King decease before the delivery of the Liberate, the Officer hath no warrant to pay it.

If the Officer at the time of the delivery of the Liberate have of the Kings money to pay but part, and not the whole, the Writ is no warrant to him to pay part. *See* 21 H.6. tit. det. 43. 27 H.6.9. 37 H.6.24, 25. 9 E.4.12.14. 1 H.7.8. 2 H.7.9. F.N.B.121. f. Br. Tit. Taille Deschequer.

Vid. Mag. Cart. cap.22. Liberationem antiquitus Stat, id est, precium antiquitus Statutum.

The course of the Exchequer is, that as soon as a Sheriff or Escheator enter into his account for issues, amerciaments and mean profits, to mark upon his head O. Ni. which is as much as to say, Oneratur, nisi habeat sufficientem exonerationem, and presently he is become the Kings debtor, and a Debt set upon his head, and thereupon the parties peravails are become debtors to the Sheriff or Escheator, and discharged against the King.

Dier 7 El.238.

The ancient course of the Exchequer hath been, that if in an Information of Intrusion into lands or tenements the Defendant plead not guilty, he shall lose the possession; and it is said that the reason of this course is, first for that regularly the Kings title appeareth of the record, and therefore the Defendant may take knowledge thereof, and the rather for that in every information of Intrusion it is specified of whose possessions the lands, &c. were: but if the Defendant plead not guilty, the Kings learned Council cannot know the Defendants title, to provide to answer the same, as the Defendant may do to the Kings title.

## CAP. XII.

*A Court to enquire of, and certifie unlawful and untrue Accounts in the Exchequer.*

**T**his Court sitteth by Commission under the Great Seal by force of the Statute of 6 H. 4. directed and sent, together with the tenour of the account, to the most lawful and discret persons in the Counties, where the Accountants be Officers, to enquire and certifie the profits which the Sheriffs, Escheators, Alnagers, Controllers, and other the Kings Officers have received, &c. by them upon their said accounts deceitfully concealed, &c. and being attainted of the said frauds and deceits, they shall forfeit treble the value, and their bodies to prison, until they have made fine and ransome to the King, after the discretion of the Judges.

6 H. 4. cap. 3.  
See Rot. Parl.  
6 H. 4. nu. 59. for  
the Print swerveth  
from the Record.

But (as hath been said before) it is certain, that it is ever most for the Kings benefit that Accounts be yearly taken in the Exchequer, and not by Commission: and to that end an Ordinance was made in the Parliament holden Anno 21 E. 1. in these words: Dominus Rex vult & præcipit, quod de cætero singulis annis semel in anno compotus Vasconix & Hibernix per Constabularium Burdegaliæ, & Thesaurarium Hibernix reddantur ad Scaccarium Angliæ, & ibid. audiantur per Thesaurar & Barones suos. A fortiori of Accounts within the Realm.

Rot. Parl. Anno  
21 E. 1. Rot. 3.  
Vide Rot. Parl.  
28 E. 1. Nich. de  
Clere Thesaurar-  
ius Hibernix.

And of the Court of the Exchequer we will end with an old Verse ingraven in Stone in the Exchequer wall,

Ingrediens Jani, rediturus es æmulus Argi.

The Chief Baron is created by Letters Patents, and the Office is granted to him Quamdiu se bene gesserit, wherein he hath a more fixed estate (it being an estate for life) then the Justices of either Bench, who have their Offices but at will: And Quamdiu se bene gesserit must be intended in matters concerning his Office, and is no more then the Law would have implied, if the Office had been granted for life. And in like manner are the rest of the Barons of the Exchequer constituted, and the Patents of the Attozney General and Solicitoz are also Quamdiu se bene gesserit.

See Lit. 1 part of  
the Instit. Sect.



## CAP. XIII.

*The Court of Equity in the Exchequer Chamber.*

**T**He Judges of this Court are the Lord Treasurer, the Chancellor and Barons of the Exchequer. Generally, their jurisdiction is as large for matter of Equity, as the Barons in the Court of the Exchequer have for the benefit of the King by the Common Law: for all the proceedings both in this Court of Equity and of that by the Common Law, ought to be, as hath been said, for the profit or benefit of the King, or touching the King: and if in either Court they hold any plea, which is not for the profit or benefit of the King, or which toucheth not the King, there lyeth a Prohibition, which, as is aforesaid, appeareth in the Register: for all are said Communia Placita which are not Placita coronæ.

Art. cler. cap. 4.  
Regist. fol. 187. b.  
Stat. de Rotland.  
cap. ultimo.

Cancell.

By the Statute of 33 H. 8. cap. 39. they have full power and authority to discharge, cancel and make void, all and singular Recognizances and Bonds made to the King for payment of any debt or sum of money, or for performance of conditions, &c. upon shewing the Acquittance, &c. or any proof made of payment and performance. Also to cancel and make void by their discretion all Recognizances made for any appearance or other contempt. And that if any person of whom any such debt or duty is demanded, alledge, plead, declare, or shew in the said Court sufficient cause and matter in Law, reason and good conscience in bar or discharge of the said debt or duty, and the same matter sufficiently prove in the said Court: then the said Court shall have power and authority to judge and allow the said proof, and clearly acquit and discharge such person and persons. Also Lands chargeable to the Kings debts in the seisin and possession of divers and sundry persons, the same shall be wholly and <sup>\*</sup> intirely, and in no wise severally liable to the payment of the said debt and duty: but in the said Act of 33 H. 8. all manner of estates, rights, titles, and interests, as well of inheritance as feehold, other then Joyntures for term of life, are excepted.

Matter in Law,  
reason and good  
conscience.  
Lib. 7. fo. 18. Sir  
Thomas Cecils  
case, and resolved  
by English Bill in  
the Exchequer  
Chamber.  
See there divers  
presidents.  
<sup>\*</sup> Lib. 7. fo. 20. ubi  
supra.  
Et lib. 3. fo. 12.  
Sir Wil. Herberts  
case.  
Inheritance.  
Freehold.

32 E. 3. tit. Aide  
Le Roy 1.  
35 H. 6. 55.

By the said Act of 33 H. 8. special Jurisdiction is given to the Court of Augmentation, when title is pretended to any Mannors, Lands, Tenements, or Hereditaments, bargained, sold, or exchanged by the King, upon which Letters Patents there is or shall be reserved any annual Rents or Farms, payable in the Court of Augmentations, and divers other clauses which gave to the Court of Augmentation jurisdiction. But the Court of Augmentation is but in shew annexed to the Court of the Exchequer, and not de jure, as hereafter it appeareth in the Chapter of the Court of Augmentations. And therefore this Court of Exchequer Chamber cannot claim any Jurisdiction given and appropriated to that Court, for that the Court of Augmentations is dissolved.

J. S. holdeth Lands of the King by fealty and yearly rent, and maketh a Lease thereof for years to A. B. pretends that J. S. leased the same to him by a former Lease; albeit there is a rent issuing out of these Lands to the King, yet neither A. nor B. can sue in this Court by any privilege in respect of the rent, for that the King can have no prejudice or benefit thereby: for whether A. or B. doth prevail, yet must the rent be paid: and if this were a good cause of privilege, all the Lands in England holden of the King by rent, &c. might be brought into this Court.

But if black acre be extended to the King for debt of A. as the Land of A. and the King leaseth the same to B. for years, reserving a rent: C. pretends that A. had



had nothing in the Land, but that he was seized thereof, &c. this case is within the privilege of this Court, for if C. prevail the King loseth his rent.

The King maketh a Lease to A. of Black acre for years reserving a rent, and A. is possessed of a term for years in White acre, the King may distrain in White acre for his rent, yet A. hath no privilege for White acre, to bring it within the Jurisdiction of this Court.

Note Reader, where our Books say, that the King may distrain for his rent in all the other lands of his tenant, of whomsoever the same be holden, it is thus to be understood, that the other Lands must be in the actual possession of the Kings tenant, for he cannot distrain in those Lands in the possession of his tenant for life, tenant for years, or at will.

Some are of opinion that a Court of Equity was holden in the Exchequer Chamber before the Statute of 33 H. 8. And then it must be a Court of Equity by prescription: for we find no former Act of Parliament that doth create and establish any such Court: and if it be by prescription, then judicial precedents in course of equity must guide the same: As to the Jurisdiction, certain it is that there hath been of ancient time an Officer of the Exchequer called Cancellarius Scaccarii, of whom amongst other Officers of the Exchequer Fleta saith thus: Officium vero Cancellarii, est sigillum regis custodire simul cum controrotulis de proficuo regni. And the Mirrour saith, Perjure est per la ou il fuit Chancellor del' Eschequer vea a tiel a faire luy acquittance de tant que a voit pay al Eschequer de la deit le Roy soubt le seale del' Eschequer ou delay a faire acquittance de tiel jour tanq; a tiel jour, &c. His ancient fee is 40 marks. Livery out of the Wardrobe 12 li. 17 s. 4 d. in toto 39 li. 10 s. 8 d. See 25 H. 8. cap. 16.

\* The Exchequer hath a Chancellor and Seal, and the Writs usual in the Chancery in the Exchequer to seise Land, are more ancient then Prerog. Regis.

Hereupon it is collected, that seeing there hath been time out of mind of man a Chancellor of the Exchequer, that there should also be in the Exchequer a Court of Equity.

Where some do vouch 22 E. 4. tit. Petition 9. for the naming of the Chancellor of the Exchequer in granting of Writs of search to the Treasurer and Chancellor, the book is false printed, for it should be the Chamberlains and Treasurer of the Exchequer: for no Writ of search is directed to the Chancellor, &c. but to the Treasurer and Chamberlain of the Exchequer, who have the custody of the Records, &c.

a We find a Petition of the Commons in 2 H. 4. that no Writs or Privy Seals be sued out of the Chancery, Exchequer, or other place, to any man to appear upon a pain, &c. to answer, &c. contrary to the ordinary course of the Common Law: whereunto the King answered, That such Writs should not be granted without necessity.

b Anno 3 H. 5. the Commons petitioned that all Writs of Subpoena and Certis de causis going out of the Chancery and the Exchequer might be enrolled, and not granted of matters determinable at the Common Law on pain of 40 li. The Kings answer was, That he would be advised.

c So as in the Exchequer there are these seven Courts. 1. The Court of Pleas. 2. The Court of Accounts. 3. The Court of Receipt. 4. The Court of the Exchequer Chamber being the \* Assembly of all Judges of England for matters in Law. 5. The Court of Exchequer Chamber for errors in the Court of Exchequer. 31 E. 3. cap. 8. & 31 Eliz. ca. 1. 6. A Court in the Exchequer Chamber for errors in the Kings Bench. 27 Eliz. ca. 8. 31 Eliz. ca. 1. Co. pl. Intr. fo. 2. 24. 37. And 7. This Court of Equity in the Exchequer Chamber.

44 E. 3. 45.

13 E. 4. 6.

8 H. 5. 4.

Pl. com. 323. a.

This prerogative holdeth not only in case of Rent service, but in case of a Rent charge and Rent seek.

Cancellarius Scaccarii.

Mirror ca. 2. §. 13. & cap. 5. §. 2.

\* Pl. com. 321.

a Rot. Par. 2 H. 4.

nu. 59.

b Rot. Parl. Anno

3 H. 5. nu. 46.

c 7 H. 6. 44.

6 H. 7. 15.

8 H. 7. 13.

Lib. 1. fo. 11.

Ver. N. B.

\* Rot. Claus. in

Dors. An. 13 E. 1.

in schedula pend.

Et si contingat

quod, &c. Vid. sup.

pa. 110. 31 E. 3.

ca. 8. 31 Eliz. ca. 1.

27 Eliz. cap. 8.

31 Eliz. cap. 1.

Co. pl. Intr. fo. 2. 24.

37.



## CAP. XIV.

*Of First-fruits and Tenths Ecclesiastical.*

Srat. de 32 H.8.  
cap.45.  
Rot.Par. 47 E.3.  
nu.30.  
7 H.4.nu.43. acc.

26 H.8.cap.3.  
2 & 3 Ph. & M.  
cap.4.

1 Eliz.cap.4: ob-  
serve the alterati-  
on and alternation

25 H.8. cap.5.  
1 Eliz. cap.4.

2 Wall. An. Dom.  
1316. Trivet.  
Ranulphus Ci-  
strensis. li.7. c.42.  
Polyd. Virg. lib.8.  
cap.2. Platina.  
Fox, &c.  
b 2 E.3. Rot. clauf.  
m.4.  
c Parl. 1 R.2.  
nu.66.  
d Rot.Par. 4 R.2.  
nu.44.

a Note they were  
not so ancient  
with us as is  
pretended.  
f Rot.Par. 6 R.2.  
nu.50.  
g 6 H.4. cap.1.

b Rot.Par. 9 H.4.  
nu.43.

i 19 E.3. tit. Ju-  
risdiction 22.  
k 26 H.8. cap.3.

**A** Court of the First-fruits and Tenths was raised, Officers constituted, of Chancellor, Treasurer, Kings Attorney, two Auditors, and two Clerks: Authority given them to compound for First-fruits, Bonds taken therefore should be of like force as a Statute Staple: but this Court was dissolved by Queen Mary Parl. 1 Sess.2. cap.10.

These were granted to the Crown by the Statute of 26 H.8. cap.3. But all the Clergy were exonerated and discharged thereof afterwards, Anno 2 & 3 Ph. & Mar. cap.4.

The Statute of 26 H.8. revived, and First-fruits and Tenths of the Clergy re-united to the Crown by Anno 1 Eliz. cap. 4. But no Court is revived, but First-fruits and Tenths to be within the rule, survey, and government of the Exchequer, and created a new Office, and Officer, viz. a Remembrancer of the First-fruits and Tenths of the Clergy, who taketh all compositions for the said First-fruits, and Tenths, and maketh proces against such as pay not the same.

First-fruits, or Annates, Primitiæ, are the First-fruits after avoidance of every Spiritual Living for one whole year (except Vicarages not exceeding 10 li. and Parsonages not exceeding 10 Marks) but all are to pay Tenths.

Ecclesiastical Livings were sometimes valued by a Book of Taxation made in 20 E.1. which remaineth in the Exchequer, and by another taxation in 26 H.8. which also remaineth in that Court. And according to this latter taxation are the values of Ecclesiastical Livings computed for the First-fruits and Tenths. What Pope first imposed First-fruits, until a Historians do agree, I will not trouble my self.

What we find of Record concerning First-fruits, we will summarily relate.

b The King forbiddeth H.P. the Popes Nuntio to collect First-fruits, &c.

c That the Popes Collector be willed no longer to gather the First-fruits of Benefices within this Realm, being a very novelty, and that no person do any longer pay them.

d The Commons do petition that provision may be made against the Popes Collectors for levying of the First-fruits of Ecclesiastical dignities within the Realm. The answer of the King in Parliament is, There shall be granted a Prohibition in all such cases where the Popes Collectors shall attempt any such e novelties.

f Upon complaint made by the Commons in Parliament, The King willeth that Prohibitions be granted to the Popes Collectors for receiving of First-fruits.

g Against First-fruits by Arch-Bishops and Bishops to the Pope of Rome, terming it a horrible mischief and damnable custom.

h It is enacted, that the Popes Collectors should not from thenceforth levy any money within the Realm for First-fruits of any Ecclesiastical dignity by any provision from Rome upon pain of the Statute of Provisors: but this is omitted out of the Print of 9 H.4. cap.8.

i The Bishop of Norwich had in 19 E. 3. by prescription time out of mind of man First-fruits within his Dioces of all Churches after every avoidance. But these also were given to the Crown k by the Statute of 26 Hen. 8. cap. 3.

Tenths Ecclesiastical, Decimæ, these are the Tenth part of the value of all Ecclesiastical

Ecclesiastical Livings yearly payable to the King, his Heirs and Successors by the said Statute of 26 H. 8. and 1 Eliz. to be valued as is abovesaid.

These the Pope (as the Canonists hold) pretend to have De jure Divino, as due to the High Priest by pretext of these words, *Præcipe Levitis atq; denuncia, cum acceperitis à filiis Israel decimas quas dedi vobis, primitias earum offerite Domino, id est, decimam partem decimæ, ut reputetur vobis in oblationem primitiarum tam de areis, quam de torcularibus & universis quorum accipietis primitias offerite Domino, & date ea Aaron Sacerdoti.* But the Parliaments in 25 H. 8. and 26 H. 8. were not of opinion that these Tenthhs did belong to the Bishop of Rome; as by the severall preambles thereof appeareth, which we have added; for that we have endeavoured to shew through all this work the severall claims or pretences of every thing whereof we have treated. And King Philip and Queen Mary yielded not these Tenthhs to the Pope, but (as hath been said) by authority of Parliament discharged the Clergy thereof: which they would never have done, if they had taken them to be due to the Pope De jure Divino. And the Bishop of Norwich could not have prescribed to have First-fruits within his Diocess, if they had been due to the Pope De jure Divino: and the rather for that Anthony de Becke, for whom the prescription was made, was a retainer to the Court of Rome, and made Bishop of Norwich by the Pope.

Num. 18. 26. &c.  
Vi. Jerom. in Eze.  
cap. 44. v. 28, &c.

19 E. 3. tit. Jurisdiction, ubi sup.

## CAP. XV.

*The Court of Augmentations of the Revenues of the Crown of England.*

This Court was erected by authority of Parliament in Anno 27 H. 8. consisting of a Chancellor, Treasurer, Attorney, Solicitor. And all lands, &c. belonging to Monasteries, and purchased lands were within the survey and governance of this Court. This Court could not be erected but by Parliament, because a Chancellor and a Court of Equity were constituted. More hereof in the next Chapter.



## C A P. XVI.

*The Court of General Surveyors of divers of the Kings lands with power to make Leases for twenty one years erected by Act of Parliament in 33 H. 8.*

33 H. 8. cap. 39.

Braët. Nihil tamen  
conveniens est  
naturali æquitati,  
unumquodque dis-  
solvi eo ligamine  
quo ligatum est.  
7 E. 6. cap. 2.  
1 Mar. cap. 10.

**B**oth these Courts King H. 8. by his Letters Patents Anno Regni sui 38. dissolved, and erected a new Court of Augmentations by his Letters Patents. The dissolution was holden void, because they were created by authority of Parliament. Vid. the rehearsal of the Statute of 7 E. 6. cap. 2. and the erection was also void for the cause aforesaid. And thereupon the said Letters Patents, as well for the dissolution of the former, and for the erection of the new Court of Augmentations were confirmed and established by the said Act of 7 E. 6.

Dier 4 Eliz. 16.  
So resolved by all  
the Judges.

Queen Mary according to the power given to her for dissolution of the said Court by Act of Parliament holden the fifth of October in the first year of her Reign, did afterwards by her Letters Patents, bearing date 23 Januarii in the same year dissolve the said Court of Augmentations: and the next day following by other Letters Patents united the same to the Exchequer, which was utterly void, because she had dissolved the same before: so as she pursued not her authority.

## CAP. XVII.

*The honourable Court of Chivalry before the Constable and Marshal.*

**R** Ot. Pat. 12 H. 4. m. This Court is called Curia Militaris, and Rot. Parl. 2 H. 6. nu. 9. the Marshal Court.

The Judges of this Court are the Lord Constable of England and the Earl Marshal of England, and this Court is the fountain of the Marshal Law. And the Earl Marshal is both one of the Judges, and to see execution be done.

Constable or Cunstable is compounded of two Saxon words, Cuninge per contractionem Kinge, and stable, id est, columnen, quasi columnen Regis, anciently writen Cuningstable. Marshal anciently writen Marfcalc, likewise of two Saxon words, viz. Marc for equus; and Stalc curator, quasi curator equorum. For the Marshal Marischallus, and the derivation thereof, see the First part of the Institutes, Sect. 102. fol. 74. Sect. 154. fol. 106. Sect. 745. fol. 391.

This Court of Chivalry was anciently holden in the Kings Hall.

The jurisdiction is declared by the Statute of 13 R. 2. Stat. 1.

Because the Commons do make a grievous complaint, that the Court of the \* Constable and Marshal have incroached to them, and daily do encroach contracts, covenants, trespasses, debts and detinues, and many other actions pleadable at the Common Law, in great prejudice of the King and of his Courts, and to the great grievance and oppression of his people, The King willing to ordain a remedy against the prejudices and grievances aforesaid, hath \* declared in this Parliament by the advice and assent of the Lords Spiritual and Temporal the power and jurisdiction of the said Constable in the form that followeth.

To the Constable it appertaineth to have consufance of Contracts and deeds of arms, and of war out of the Realm, and also of things that touch war within the Realm, which cannot be determined or discussed by the Common Law, with other usages and customs to the same matters pertaining, which other Constables have heretofore duly and reasonably used in their time, joyning to the same that every Plaintiff shall declare plainly his matter in his petition afore that any man be sent for to answer thereunto. And if any will complain that any plea be commenced before the Constable and Marshal, that might be tried by the Law of the Land, the same Complainant shall have a Privy Seal of the King without difficulty directed to the said Constable and Marshal to surcease in that plea, till it be discussed by the Kings Council, if that matter ought and of right pertaineth to that Court, or otherwise to be tried by the Common Law of the Realm of England, and also that they surcease in the mean time.

See the Third part of the Institutes, Cap. High Treason, pag. 26. Rot. Pat. 25 E. 3. parte 1. m. 16. 1 H. 4. between the Lord Morly and the Earl of Sarum, the Record whereof we have seen. Rot. Pat. 2 H. 4. parte 1. m. 7. between Kighly and Scroop. Rot. Pat. 3 H. 4. Ballethals case. Rot. Vascon. 9 H. 5. nu. 14. Bul-

lemers

¶ The Stile of the Court.

¶ The Judges. 43 E. 3. fol. 3. See the First part of the Institutes, Sect. 745. many other authorities cited.

¶ The name. First part of the Institutes, Sect. 102 & 153.

¶ The place.

¶ The Jurisdiction: Rot. Pat. 8 R. 2. nu. 31. not in print 13 R. 2. Stat. 1. cap. 2. Rot. Parl. 8 H. 4. nu. 38. \* The Judges, Vide infra. 1 H. 4. cap. 14. \* Nota, declared.

¶ The power and jurisdiction.



lemers case. Rot. Parl. 21 R. 2. nu. 19. &c. Rot. Parl. 2 H. 6. nu. 9. Holl. Chron. 424. 3 H. 4. *Sir John Annelleys case.* See this case Walsing. p. 237. Duellum percussum. Ibid. 8 R. 2. 446. *John Wallhes case.* For this case of Wallsh, see Walsing. p. 311. and Stows Annals 477. Howes Chron. 8 H. 6. 371. between John Upton and John Down. Vide Stowes Survey of London 385. See this case. Rot. Pat. 8 H. 6. parte 2. m. 7. Annals 609. Stow. Ibid. Anno 25 H. 6. Anno Domini 1446. between John Davye and William Catur his master, Annals 655. ibid. 386. batel joyned between Thomas Fitz-thomas Prior of Kilman and James Butler Earl of Ormond; but when it came to the point the King forbade it. Vide Rot. Parl. 2 H. 6. nu. 9. John Lord Talbot Lieutenant of Ireland accused the Earl of Ormond of High Treason before the Earl of Bedford Constable of England in his Marshals Court, the King did abolish the accusation.

\* Deut. 19. 18. And the judges shall make diligent inquisition, and if the accuser be found false, and that he hath given false witness against his brother, then shall you do to him as he had thought to do to his brother, and thou shalt put evil away from the midst of thee.

What judgment shall be given when either party is vanquished, see the Articles of the Duke of Glouc' Constable of England about the beginning of the Reign of R. 2. The Law of arms is, that the Appellant being overcome shall incur the same punishment, that the Defendant ought to have done if he had vanquished.

See an ancient Manuscript in French entituled *Modus faciend' Duellum corā Regē. Bone foy & droit & Ley de Arms voet, quel appellant encourage mesme peyne que le defendant deveroit, fil soit convict & discomit.* \* And this seemeth to be consonant to the Law of God.

This Manuscript treateth both of the jurisdiction and manner of the proceeding before the Constable and Marshal, and for that it is long, and I doubt not but copies thereof are in many hands, I have not inserted it here.

There are many in forain parts that have written of Combats, &c. in Latine, French, and Italian. As Alciat, Lancelotus, Conradus, Johannes de Lignano, Mutio Jullino Politano, Berandler, Beutheus, Desdiguieres, &c. to whom we refer the reader, for that it is safe to follow the Acts of Parliament concerning the jurisdiction of this Court, and such presidents as have been before the Constable and Marshal in the Marshals Court within this Realm.

[ Out of the Realm. ] This is to be understood in any forain part beyond the Seas, In partibus exteris & transmarinis. For upon the Sea the Admiral hath jurisdiction, which Admiral (our English Neptune) cannot meddle with any thing done beyond the Seas upon the Land, and the Constable and Marshal have no consulance of any thing done upon the Sea.

26 H. 8. cap. 13.  
35 H. 8. cap. 2.  
5 E. 6. cap. 11.

See 1 E. 6. cap. 12.  
& 5 E. 6. cap. 11.  
in the 3. part of  
the Inst. p. 24.

See 5 El. cap. 5.

\* Vid. Regi. 129.  
F.N.B. 114. b.  
Note remedy by  
the Common Law  
for wrong done  
beyond the Sea.

Where by these Acts it is provided, That all treasons, misprision of treasons, or concealment of treasons committed out of this Realm of England, should be inquired of, heard and determined in the Kings Bench by good and lawful men of the same Shire, where the said Bench shall sit, or else before such Commissioners and in such Shire, as should be assigned by the Kings Commission by good and lawful men of the same shire, in like manner and form to all intents and purposes as if such treasons, &c. had been done within the same, &c. None of these Acts doth take away the jurisdiction of the Constable and Marshal, where one accuseth another of High Treason done out of the Realm: for of such an accusation of one against another of any High Treason done out of the Realm the Constable and Marshal should have consulance thereof: because High Treason is not triable by Jury according to the course of the Common Laws of the Realm in that case for want of proof, as by all the presidents aforesaid it appeareth. Neither doth the said Act of 35 H. 8. or 5 E. 6. take away the Statute of 28 H. 8. cap. 15. for trial of treasons done upon the Sea albeit they be done out of the Realm. See hereafter Cap. 23. and the Third part of the Institutes, Cap. of Piracy, p. 111, & 112. and there was no doubt conceived of the trial of them. See the preamble of the Statute of 35 H. 8. and of 5 E. 6.

\* If any Merchant English be spoiled, or his goods taken from him beyond Sea by any Merchants Strangers, and the English Merchant cannot upon suit attain



attain to Justice there, he shall have upon testimony thereof a Writ out of the Chancery to arrest the Merchants Strangers if they come into England, or their goods, &c. until they be satisfied. So hereafter the Chapter of Admiralty.

Before this Act at a Parliament holden in the 8 year of R. 2. It was enacted, Rot.Par. 8 R.2. nu.31. not printed that no plea which should concern the Common Law should be tried before the Constable and the Marshal.

No addition either of persons or of jurisdiction can be added to this Court, unless it be by Act of Parliament, \* for ancient Courts ought to be exercised according to the ancient and right institution. Rot.Par. 5 R.2. nu.39. Bennet Willmors case. 6 H.7.5. Simile. \* Regul. 6 H.7. 4.5.

In the Appeal aforesaid between Upton and Down in 8 H. 6. after battle joyned, the Kings Writ out of the Court of Chancery issued to the Sheriffs of London, as we find it entered and recorded in the great book of the Atty of Bury fo.87. as followeth.

*Rex Vic' London Salutem: Precipimus vobis firmiter injungentes quod quasdam listas & barras de meremio fortes & satis sufficientes pro quodam Duello inter Johannem Upton Appellantem & Johannem Down Defendentem, secundum legem Armorum die Luna prox' futur' apud West-Smithfield in suburb' Civitatis predictæ Deo dante perficiend' contra diem predictum nostris sumptibus & expensis erigi, construi, & fieri fac' in omnibus prout in ultimo duello ibidem facto fact' fuerunt, & quod terra infra listas predict' cum sabulo sufficiente & equalit' cooperiatur, Ita quod aliqui lapides grandes aut arena infra easdem listas minime inveniantur quovismodo: Et de omnibus & singulis pecuniarum summis quas circa præmissa applicaveritis, nos vobis in compoto vestro ad Scaccarium nostrum per præsens mandatum nostrum, debitam allocationem habere faciemus, &c.* Breve Vic' London pro listis & barris, &c. pro duello fac' Lex Armorum. Pro duello, &c. See the Articles set down by Tho. of Woodstock Duke of Glouc' Constable of England, about the beginning of the Reign of R.2.

By this Writ we observe four things. 1. That Sheriffs ought to make the lists, &c. 2. The manner how they are to make them. 3. That they ought to make them by the Kings Writ. 4. That they are to be made at the Kings charges. See modo fac' duellum coram rege.

By the Statute of 1 H.4. all Appeals of things done within the Realm shall be tried and determined by the good Laws of the Realm, &c. And that all Appeals made of things done out of the Realm shall be tried and determined before the Constable and Marshal of England for the time being, and that no Appeal be pursued in Parliament. 1 H.4. cap.14. Rot.Par. 11 H.4. nu.24. a 13 H.4. fo.4.5. q By the Civil Law, &c. \* 37 H.6. fo.3. Fortesc' cap.32. fo.38.

They proceed according a to the customs and usages of that Court, and in cases omitted, according \* to the Civil Law, secundum legem Armorum. And therefore upon Attainders before the Constable and Marshal of England for the time being, no Land is forfeited, or corruption of blood wrought.

For Records, Book-cases, and other Authorities in Law as well for the exposition of the said Statutes, as for the jurisdiction and proceedings of this Court, b see the First part of the Institutes, Sect.102. and 745. and peruse the Authorities there cited. See also the petition of Right, 3 Car. cap.1.

It is to be observed that after sentence pronounced in this Court of Chivalry in case of Arms the party grieved may appeal to the King, whereof you may read a notable Record, Rot.Par. 13 R.2. parte 3. Note also a special Roll, An. 14 R.2. intituled Rot. process' in curia militari in causa Armorum, Int' Ric' le Scroop Chivalier, & Robertum Grovener Chivalier.

And for this cause (amongst others) c the Heralds are Attendants upon this Court. Of these Heralds there be tres Reges, viz. Garter Rex Armorum, Cla-

Commission for arraying and mustering of men, which at this day is of force, and no other. Vide 8 H.4. nu.12. Clergy exempt out of that. See also 14 E.3. Stat.2. nu.53. a Commission of Lieutenancy. See hereafter amongst the Ecclesiastical Courts. Tit. Appeals. Vid. Glover 82,83. c Saxonice Ernhold, i. honorem tenens, Latine faciales. 5 E.4.6.b. Pl.Com 12.b.

b 11 H.4. nu.24. All Statutes made touching the Courts of the Constable and Marshal and Admiral of England shall be observed. Vide Rot.Par. 5 H.4. nu.24. An Act not in Print touching a



<sup>a</sup> Rot. Pat. 1 R. 3.  
Rot. Pat. 2 & 3  
Ph. & Mar. 18 July:  
Their Colledge is  
in the Parish of S.  
Benet in Castle  
Bainard Ward  
granted to the cor-  
poration of the  
Heralds by Letters  
Patents bearing  
date 18 July 1555.  
Anno 2 & 3 Ph. &  
Mar.

<sup>b</sup> Ezek. 13. 8, 9.  
Psal. 69. *deleantur  
de libro viventium.  
& cum iustis non  
scribantur.* 1 Eldr.  
ca. 2 62. *Hi quesie-  
runt Scripturam ge-  
nealogiæ suæ & non  
invenierunt, & ejecti  
sunt.*

<sup>c</sup> Discharged of  
Subsidies.

<sup>d</sup> Regist. 287. b.  
F. N. B. 247. c.

\* Or in the Kings  
Bench or other  
Court.

Nota, pro Barone.  
Vid. 8 H. 6. 9. 10.  
14 H. 6. 2. Lib. 6.  
fo. 53. b. le Countes  
de Rutlands case.

10 E. 2. Camden  
Brit. Rot. Cart.  
23 H. 3. nu. 32. 34.  
Almarick Earl of  
Leic.  
Matth. Par. pag.  
647.

\* Inquisit' 21 H. 6.  
Post mortem Wil-  
ielmi domini de  
Eincourt.

Hil. anno 31 El.

renceux Rex Armorum ex parte Australi, Norroy Rex Armorum ex parte Bore-  
ali, & sex alii Herald. These English Heralds are messengers of War and  
Peace, skilful in descents, pedegræs, and Armories; they marshal the solemn-  
nities at Coronations, they manage combats before the Constable and Marshal,  
and upon request they solemnize the Funerals of noble, honourable, reverend,  
and worshipful Personages. They were first incorporated by King R. 3. and  
afterwards newly incorporated by King Philip and Queen Mary. Their learn-  
ing and faithful dealing in descents and pedegræs upon just proof may be a  
mean to quiet many controversies about the titles of Honours, Dignities, and  
Inheritances.

<sup>b</sup> In the Prophet Ezekiel it is thus written: Dicit Dominus Deus, & erit ma-  
nus mea super Prophetas, qui vident vana, & divinant mendacium: in concilio  
populi mei non erunt, & in Scriptura domus Israel non scribentur.

Upon these latter words Divines do hold, Quod mos erat in Israel, quod una-  
quæque familia genealogiam ejus scriberet, in qua dignoscebatur quilibet de qua  
tribu erat, & de qua familia, & quæ hæreditas ejus esse deberet, & ille qui penitus  
destrueretur non scriberetur.

<sup>c</sup> These Heralds are discharged of Subsidies, Tolls, and other charges of the  
Commonwealth, by Letters Patents of E. 6. Anno 3. of his Reign.

See the First part of the Institutes for degræs, and creations of Nobility, and  
trial thereof, Sect. 9. fo. 16. & Sect. 95. fo. 69. whereunto you may add a notable  
Writ in <sup>d</sup> the Register, when a Baron, or any higher degræ of Nobility is  
sued in the \* Court of Common pleas, and proces awarded against him by Ca-  
pias or Exigent, then he may sue out this Writ.

*Rex Justiciariis suis de Banco Salutem. Mandamus vobis, quod si  
G. T. miles coram vobis ad sectam alicujus per actionem personalem impla-  
citatus existit, talem processum & non alium versus ipsum in actione præ-  
dicta fieri faciatis, qual' versus Dominos, Magnates, Comites sive Barones  
regni nostri Angliæ qui ad Parlamentum nostrum de summonitione nostra  
venire debent aut eorum aliquem secundum legem & consuetudinem regni  
nostri Angliæ fuerit faciend', quia prædict' G. T. unum Baronum regni  
prædict' ad Parliamenta nostra de summonitione regia venientium re-  
cordari, &c.*

The Barony of Edmond de Eincourt commonly Deincourt of Langley in  
Lincolnshire, originally created by Writ, had long continued in his Sirname,  
and having no issue male, desirous that his Sirname, Arms, and Barony, all  
which he held in fee simple might continue, by humble suit importuned King  
E. 2. for that he conceived, Quod cognomen suum & arma post mortem suam  
deherentur, & corditer affectabat ut post mortem ejus in memoria haberentur, ut  
de maneriis & armis suis feoffaret quemcunque voluerit: and in the end he ob-  
tained his suit by the Kings Letters Patents under the Great Seal, and af-  
terwards about 19 E. 2. he assigned according to the Kings grant his Sirname,  
Arms, and Possessions. For we find in the close Rolls that the said Edmond  
Baron of Eincourt sat in Parliament until and in 18 E. 2. and that after  
his decease his Assignæ sat in Parliament in 1 E. 3. by the name of William  
de Eincourt, and in his heirs males the Dignity, Sirname and Possessions  
continued \* until 21 H. 6. and then his heir male, together with the name and  
dignity ceased.

And I did hear the Baron of Burghley Lord Treasurer Deputy to the Earl  
of Shrewsbury then Earl Marshal of England, in hearing of the cause by the  
Queens commandment between Edward Nevil and Lady Mary Vane Daughter  
and Heir of Henry Lord of Aburgavenny for the right of the Barony of Abur-  
gavenny, vouch a Record in the Reign of E. 4. That the Lord Hoc, who bare for  
his Ensigns of Honour quarterly Silver and Sable, having no issue male, by his  
pæd



doed under his seal granted his name, Arms and Dignity over, but having not the Kings Licence and Warrant, the same was in Parliament adjudged to be void.

Our Herald is constituted by Letters Patents, and have many ceremonies done unto them at their creation, but those ceremonies are not of the essence of their office, but the Letters Patents only: and so it was adjudged in the Kings Bench in the Reign of Queen Eliz. in the case of Dethick King of Arms. But thus much of Herald upon this occasion shall suffice: and now let us return to our Constable and Marshal.

In ancient Laws before the Conquest, you shall read De Herefochiis or Here-togis, *i. ductoribus exercitus, ab hepc exercitus & toecu ducere.*

Herefochius agreeth with either of these great Officers, Constabularius or Marischallus: Isti vero eligebantur per commune concilium pro communi utilitate regni per provincias & patricos in pleno Folkmote.

This office of the Constable of England was afterwards of inheritance by the tenure of the Mannors of Harlefield, Newman, and Whitenhurst by Grand Serjeanty, in the line of the Bohuns Earls of Hereford and Essex, and afterwards of right in the line of the Staffords and Dukes of Buckingham as heirs general to them: at the last by the opinion of \* all the Judges it was lawfully descended to Edward Duke of Buckingham, who was attainted of Treason, in Anno 13 H. 8. whereby this office became forfeited to the Crown, and since that time both in respect of the amplitude of the Authority both in War and Peace, and of the charge, it was never granted to any subject, but now of late hac vice.

For the office of the Earl Marshal, see the First part of the Institutes, Sect. 102. & 135.

The effect of the grant of this Office of Constable of England is in very few words, viz. Officium Constabularii Angliæ una cum omnibus feodis, proficuis, commoditatibus, & emolumentis quibuscunque officio prædicto qualitercunque pertinentibus, & ab antiquo debitis & consuetis. And by no means we are to follow the irregular precedent of the grant thereof by King E. 4. in the seventh year of his Reign to Richard Wideville Earl Rivers and Lord of Grafton and De la mote for his Life: which Patent you shall find Rot. Pat. Anno 7 E. 4. part 1. and is directly against the Common Law and the Statutes concerning the Jurisdiction of this Office; and therein to over-reach all the good and whole some Laws made for the declaration of the Jurisdiction of this great Office, power was given to the Earl Rivers to have consuance in case of High Treason, and other causes and affairs, Quæ in Curia Constabularii Angliæ ab antiquo, viz. Domini Guilielmi Conquestoris progenitoris regis, seu aliquo tempore citra, tractari, audiri, examinari & decidi consueverunt, seu de jure debuerunt sive debent, & diversa alia perperam. And therefore by no means the same or the like is to be drawn into example.

For grants of this great Office of Constable of England, see the precedents, and by that which hath been said choose the best. Rot. Pat. 1 H. 4. parte 1. Henrico comiti North. pro vita. Rot. Pat. 4 H. 4. parte 2. Johanni filio regis, ad placitum. Rot. Parl. 1 H. 6. nu. 23. Duci Glouc' ad placitum. Rot. Pat. 1 H. 6. parte 2. Johanni Duci Bedford pro vita. Rot. Pat. 8 H. 6. parte 1. Richardo Duci Eborum in absentia Johannis Ducis Bedford. Rot. Pat. 25 H. 6. parte 1. Johanni Vicecom' de bello monte. Rot. Pat. 28 H. 6. parte 2. m. 22. Henrico Com' Northumbr. ad placitum. Rot. Pat. 29 H. 6. parte 1. Edmundo Duci Somerset. ad placitum. Rot. Pat. 1 E. 4. parte 3. m. 188. Johanni Com' Wigorn'. Rot. Pat. 7 E. 4. parte 1. Johanni domino Tiptoft. Rot. Pat. 7 E. 4. Ubi supra Richardo Com' Rivers. Pat. 8 E. 4. parte 1. Pat. 9 E. 4. Georgio Duci Clarenc'. Pat. 9 E. 4. parte 2. Richardo Duci Gloc'. Pat. 10 E. 4. parte \* Johanni Tiptoft Comiti Wigorn. pro vita. Pat. 16 E. 4. parte 1. Richardo Duci Eborum. Henricus Stafford Dux Buckingham jure hæreditario. Pat. 1 R. 2. Thomas Dominus Stanley. Edwardus Dux Buck' jure hæreditario.

Int' leges Edwardi regis. Lamb. 136. Hovenden Annal. Cap. 35. De Herefochiis.

Of ancient time eligible. Lambard ubi sup. Hovenden. ubi sup. \* See 11 El. Dier 285. so resolved in 6 H. 8.

Hic omnium immensissimus: but the debts of cruelty are never unpaid, respice finem.



This great office hath been usually granted, as by the presidents aforesaid appeareth, Exercendum per se vel per sufficientes deputatos suos, seu per sufficientem deputatum suum.

There is also an Office of Subconstabularius granted to Thomas Kent Doctor of Laws. Pat. 23 H.6 parte 2. Simile Pat. 22 E.4 m.1.

There is also Clericus Constabulariæ Angliæ, & Promotor causarum & negotiorum regiam majestatem tangen'. This Office was granted to Thomas Appulton with a fee of five marks, Pat. 8 E.4 parte 1.

Concerning the grants of the Office of Earl Marshal of England, for this Office ever passed by the grants of the King, and never belonged to any Subject by reason of tenure, as the Stewardship and Constableness of England sometime did.

Rot. Cart. 20 R.2.  
m.1.n.3.

\* This is the first  
file that ever  
came in any Patent.

Rex, &c. Sciatis quod cum nos nuper de gratia nostra speciali concesserimus dilecto consanguineo nostro Thomæ Comiti Notingham Officium Marechalli Angliæ, habendum ad totam vitam suam: Nos jam de ulteriori gratia nostra concessimus præfato consanguineo nostro officium prædictum \* *una cum nomine & honore Comitis Marechalli.* Habendum sibi & hæredibus suis masculis de corpore suo exeuntibus cum omnibus feodis, proficiis & pertinentiis quibuscunque dicto officio qualitercunque spectantibus imperpetuum. Hiis testibus, &c. Dat. 12 Junii Anno Regni sui 20. This Charter of creation is confirmed by Act of Parliament. The former grant before recited, yet shorter then this, was made anno 9 R.2.

Rot. Cart. 9 R.2.  
nu.17.

For other grants of this Office in Rot. Cartarum, Pat. & Parl. See Rot. Cart. 1 Johannis parte 2. nu.85. Rot. Cart. 9 E.2. nu.32.

Vide Rot. Pat. { 1 H.3.m.14.16.  
22 R.2.parte 1.m.12.  
1 H.4.parte 1. & 5.m.6.  
1 R.3.parte 1.m.12.  
1 H.7.parte 3.  
2 H.8.parte 2.  
25 H.8.parte 2.  
1 E.6.parte 1. m.19. & 22.  
19 Ja parte 13.nu.5.  
3 H.6.m.181.  
1 Mariæ nu.34.  
1 R.2.m.4. & 3.  
20 R.2.nu.33.  
Parl. 21 E.1. Rot.1. Quæ pertinent ad officium Comitis Marechalli, &c.

Vide Rot. Parl.

Pat. 22 E.4.m.2.

There was also Vicemarechallus, which office was granted to Tho. Grey hac vice.

Vid. Lib. nigr' de Scaccario, concerning the offices of the Constable and Marshal, & Lib. rubro fo.36.

See also the Marshal of England, Fleta lib. 2. cap. 45. and Britton in principio libri.

See Mich. 13 E.2. in Scaccario pro feodis Constabularii Angliæ.

Hil. 5 E. 3. in Scaccario Certificatio fact' Regi pro officio Marechalli. 1 E. 3. fo.16. 2 E.3 fo. 12. 48 E.3.3. Rot. Parl. 2 R.2.nu.47. 5 R.2. Tit. Trial 54. Rot. Par. 5 H.4. nu.39. Kelwey 172. Stanf Pl. Cor.65. Fortescue Ca.32. fo.38. 5 Mar. Brit. tit. battel 15.

Herelica significeth a Soldier hired and departing without Licence, derived of Here, exercitus, & fliten, to depart.

If any Soldier have covenanted to serve the King in his War, and appear not at the time and place appointed, there lyeth by the Common Law an original Writ of Capias conductos ad proficiscendum, directed to two of the Knights Serjeant

Reg. H. fo. 191.a.  
& Par. 5 E. 3.  
nu.18.

Serjeants at Arms to arrest and take him wheresoever he may be found, and to bring him Coram consilio nostro with a clause of assistance: but of this matter see the Third part of the Institutes, Cap. [Soldiers that depart, &c.] &c. 3. Car. the petition of Right concerning Partial Law, and the Commission to Lieutenants, &c.

To conclude with some short touch concerning right of war. Si quando accersis ad expugnandā civitatē, offeres ei primū pacem: and see there many things concerning right of war. Quis Rex iturus committere bellum adversus alium Regem, non sedens prius cogitat si possit cum decem millibus occurrere ei qui cum viginti millibus venit ad se, alioquin illo adhuc longe agente legationem mittens rogat ea quæ pacis sunt. Deut. 20. 10. &c. Luc. 14. 31.

Haud facile vincitur qui de suis & adversarii copiis vere poterit judicare. Qui colloquium offert, semper pavescit, he that offereth parly is ever afraid. Nulla sunt meliora consilia quam quæ ignoraverit adversarius antequam facias. Tacitus. Vegetius de remilitari.

Nullum bellum est justum, nisi aut pro rebus petitis geratur, aut ante denunciatum sit, & indictum. Cicero Offic.

Jure gentium non licet indictas inimicitias exercere & bellum gerere, priusquam ille à quo injuria sit orsa moneatur illicitam injuriam refarcire, & ab injuria assistere. Camden.

Justum autem bellum est quod tria hæc habet, Authorem, Causam, Finem. Lipsius.

Semper in prælio hiis maximum periculum, qui maxime timent. Salust.

Longa belli præparatio celerem dat victoriam. Veget. & Seneca.

Ideo suscipienda sunt bella, ut sine injuria in pace vivatur. Cicero ubi sup.

In republica maxime conservanda sunt jura belli. Arist. 10.

\* Olim veteri lege armorum cives & burgenses militiam tractare prohibiti fuerunt. \* Vid. 24 E. 3. Tit. Coron.

We touch Vegetius for his own hono<sup>r</sup> and worthiness, and for that Fortescue fol. 70. b. citeth him.



## C A P. XVIII.

*The Court of the Marshalsea.*¶ *The name.*

1 part of the Institutes, §. 102. &amp; 135.

¶ *The Antiquity and honor.*

4 H. 6. 8. L. 5 E. 4. 229.

¶ *Wherefore it is called the Court of the Marshalsea.*

**F**OR the derivation of Mareschallus & Mareschalcia, see before in the next preceding Chapter of the Court of the Constable and Marshal, that they be derived from two Saxon words which we conceive tenderly much for the proof of the antiquity and honor of our Nation, seeing other Nations have the same Officers and Offices; and in respect their name is derived from the language of our Ancestors, it is like they took the same from us.

Albeit in this Court the Steward and Marshal of the household are Judges, and the Steward hath the precedence, yet the Court is called the Court of Marshalsea for three causes. First, He is not only a Judge, but seeth that execution (which is the life of the Law) be done. Secondly, His office is in force both in time of peace, and in time of war. Thirdly, Though the Constable hath the precedence of the Marshal of England, yet the Court holden before them is called the Marshal Court, for the causes aforesaid. See before in the Chapter of the Constable and Marshal, see also Rot. Par. anno 8 H. 4. nu. 82. that the Court of the Marshal can hold no plea but such as were holden in the Reign of E. 1.

¶ *The Jurisdiction of this Court is original and ordinary.*

4 H. 6. 1.

Hil. 20 R. 2. Corā Rege Rot. 58. Mid. W. 1. cap. 26. fees.

For the jurisdiction of this Court, and within what precinct, see in my Reports, Lib. 10. fol. 68, 69 &c. Le case del Marshalsea. Lib. 6. fol. 20, 21. Michelbornes case. 7 H. 4. 15. in Calvins case. Lib. 4. fol. 46, 47. Swirts case. See Parl. 30 E. 1. Rot. 2. All inquisitions concerning any Citizen of London shall be taken in London.

Pertinet ad Mareschallum Cur' hic venire fac' juratores super felones captos cum manuopere in Aula Regis.

This Court hath his foundation from the Common Law of England.

This Marshal by the Statute of W. 1. can take no fee for doing of his office, but only of the King, but such fees as latter Acts of Parliament have given him, he may take. See the Third part of the Institutes, Cap. Exortion.

For the fees of the Marshal of the Kings house, and of staffe bearers, and servants of bills, see the Statute of 2 H. 4. Cap. 23.

Rot. Par. 17 E. 3. nu. 31.

To conclude this Chapter with an Act of Parliament not in print. It is enacted that every person arrested into the Marshalsea, may tell his own tale, and that the Officers do not pass the Uerge. See Par. 50 E. 3. nu. 91. 162.

## CAP. XIX.

*The Counting-house of the Kings Household.*  
*Domus Compotus Hospitii Regis.*

**I**T is commonly called the Green cloth, in respect of the Green cloth upon the Table, whereat the honorable Officers hereafter mentioned do sit, viz. the Lord Steward, the Treasurer of the Kings House, the Controller of the Kings house, the Master of the Household, the Cofferer, and two Clerks Controllers continually sitting in this Counting-house for these purposes. First, For daily taking the accounts for all expences of the said household. Secondly, For making of provisions for the said household, according to the Laws and Statutes of the Realm. Thirdly, For making of payment for the same accordingly. Fourthly, For the good government of the Kings servants of household. Fifthly, The Cofferer is to pay the wages to the Kings servants beneath the stairs, and the Lord Chamberlain above the stairs of the Kings household. Vide 39 El. c. 7. and he is to account in the Exchequer for about 40000 l.

33 H.8. cap. 12.

**Sæ** Fleta de officio Thesaurarii Hospitii Regis, &c. Habet enim Rex alios clericos in hospitio suo, ut Thesauro Garderobæ suæ quæ est locus Clericis tantum assignatus, quæ in Francia Camera Clericorum appellatur. Huic enim Thesauro curæ expensæ Regis & familiæ suæ committit, q̄ cum Clerico provido sibi associato pro Controlatore recordum habet ut in hiis q̄ officium suum contingunt.

Fleta lib. 2. cap. 13  
 Thesaurarius Garderobæ.

**¶** Officium Thef. Garderobæ est pecuniam, jocalia ex emina Regi facta recipere & recepta regisque secreta custodire, & de receptis expensæ facere rationabiles, expensarumque particulas inbreviare, & de particulis comp' reddere ad Scaccarium singulis annis in festo Sanctæ Margaretæ absque sacro præstando, eo quod de consilio Regis est juratus, Et unde primo debet distincte & aperte comp' reddere de omnibus receptis separatim per se in uno rotulo. In alio autem rotulo de expensis quotidianis de quibus Sen audiverit comp', simul cum Thef. & consocio suo. Item de necessariis expens. in quibus emptiones equorum, cariagia & plura alia continent. Item de donis. Item de oblationibus & eleemosynis. Item de vadiis militum. Item de vadiis balistar. Item de feod' forinsecis. Item de præstit' & accommodat.

Compotum reddere.

De consilio Regis juratus.  
 Modus compoti.

**¶** Item de expens. Garderobæ in quib' emptiones pañorum, pelure, cere, spérû tele, & hujusmodi comprehenduntur. Item de jocalibus. Item de expens. forinsecis, in quibus divertio onerant in compot reddend'. Item de Nunciis. Item de Falconar.

**¶** Thef. autem memoratus convenire debet singulis noctibus Sen hospitii, Camera Controlatorem & clericum ejus, Coffrarium, Mar aulæ & hostiar milites, Mar servient & duos hostiar aulæ & hostiar cameræ servientes, assessorem ferculorum, pincernam, panet' pistorem & clericum eorundem officiorum, q̄ de expens. dietæ, viz. panis, vini, & cervis. pichiorum, ciphorum, salis, fructus, casei & hujusmodi respondebit.

Convenire singulis noctibus. Coffrarius.

**¶** Item duos magistros Cocorum, lardenar, poletar, scutelar, falsar, & clericum coquinæ qui de eisdem officiis pro omnibus in eorum præsentia de expens. illius dietæ reddit rationem, quorum omnium præsentia necessaria est. Item Eleemosynar, janitor servientem ad custodiam summar & caretarum deputatum & clericum de Marefcalcia cum Marefcall' fractore equorum, qui quidem clericus de expens. feni & aven' litere fracture equorum & harnesie pro equis & caretis ac de vadiis servient scutiferarum clericorum & garc' respondebit, cujus interest scire tam de hiis qui de novo erunt admitti ad vad' Regis, quam de vagantibus & in hiis vadia minuere & augere. Vadia autem absentibus sine speciali præcepto Regis nisi obsequio reg' fuerint minime concedunt, præsentia autem Coronatoris Regis

Magistri Cocorum.  
 Clericus Coquinæ.



Regis necessario erit in pleno compoto, compoti auditores super foro frumenti & aven instruet & edocent qualiter proclamant in eisdem partibus per quod melius scire possint quot panes obolati fieri debent de quartum frumentum, quibus omnibus congregatis audire debet expensum & rationabilem compositionem illius dietarum.

¶ Marechalli autem de supervenientibus debent inferiori Mares testimonium perhibere. Hostiarius miles hostiariis aliis de numero ferculorum lardenarum, coco, camerarum, hostiario camerarum Regis, & sic quibus alii, & sic audiantur compotus de tota dieta.

And then followeth a description of the duties of the several officers above said, worthy the reading.

Artic' sup. Cart.  
cap. 2.  
\* Countinghouse  
having the Green-  
cloth. Rot. Parl.  
28 E. 3. nu. 34.

\* 36. E. 3. ca. 2, 3,  
4, &c.

Rot. Parl. 36 E. 3.  
nu. 18.

The Cofferer is in Fleta called Coffarius of the Coffer: because he should have money in his Coffer to pay wages, &c. as is aforesaid. It is enacted by the Statute of 28 E. 1. cap. 2. That all Purveyors shall account in the \* household, or in the Wardrobe, Rot. Parl. 28 E. 3. nu. 34. no Purveyor arrested shall be brought before the Council, &c. but take his remedy by the Common Law. See the Third part of the Institutes, cap. Purveyors.

\* See the Statutes concerning Purveyors, Anno 36 E. 3. cap. 2, 3, 4, 5, 6, &c. But observe that there is left out of the print the pain on the Steward, Treasurer, Controller, and other Officers of the household at the Kings will, for not executing the Statute: which omission hath made those of the Greencloth the bolder.

At that Parliament it was also enacted, that the Kings carriages should be made in as easie manner as might be, and that in the Summer, and other times convenient, as in August (which is also left out of the print.) For the Kings Carriages see Mag. Cart. cap. 21. and the exposition upon the same in the Second part of the Institutes.

For the Wardrobe, Vide 15 E. 2. Rot. per se. 1 E. 4. c. 1. Clerk of the Wardrobe, Rot. Parl. 7 H. 7. the expences of the Kings household and Wardrobe: 1 H. 8. an Act concerning the great Wardrobe. 3 H. 8. the assignment for the Kings Wardrobe. 39 Eliz. cap. 7. Master of the Wardrobe, whose office is accountable in the Exchequer. See W. 1. cap. 44. what issues the Kings Justices are to estreat into the Wardrobe: more of the Wardrobe, Rot. Claus. 33 E. 1. m. 3. Rot. liberationum, 11 E. 2. m. 4. To conclude, See Rot. Claus. 18 E. 4. m. 13. where it appeareth that Letters and Writings concerning matters of State, which were not fit to be made vulgar, were enrolled in the Wardrobe, and not in the Chancery, as leagues were and ought to be, as it appeareth in 19 E. 4. 6. And thus much of the Wardrobe being mentioned in Fleta.

Vid. infra cap. 26.

The Officers of the Counting-house never held plea of any thing.

## CAP. XX.

*The Court of the Lord Steward, Treasurer, and Controller of the Kings household, concerning Felony by compassing or conspiracy to kill the King, or any Lord or other of the Kings Council, &c.*

**T**hey have Jurisdiction by Act of Parliament to enquire, hear, and determine the said offence, as particularly and at large appeareth in the Third part of the Institutes, ca. Felony, by compassing, or conspiracy to kill the King, &c.

3 H. 7. cap. 14.  
3 part of the Institutes cap. Felony by compassing or conspiracy to kill the King fol. 67.

## CAP. XXI.

*The Court of the Lord Steward of the Kings House, or in his absence of the Treasurer, and Controller of the Kings House, and Steward of the Marshalse.*

**T**hey have Jurisdiction by Act of Parliament to enquire of, hear, and determine all Treasons, Disprison of Treasons, Murders, Manslaughters, Bloodshed, and other malicious strikings, whereby blood shall be shed in any of the Palaces and Houses of the King, or in any other House where the King in his Royal Person shall be abiding. And by that Act the \* limits and bounds of the Kings Palaces or Houses, or the House where the Royal Person is abiding, are particularly and expressly set forth and described. In this and like cases we refer you to the Statute it self, for Compendia sunt dispendia.

33 H. 8. cap. 12.  
See the Statute for the trial and manner of proceeding.  
Rastall pl. 124.  
See the third part of the Institutes, cap. Misprision. fol. 229.  
\* Vide 28 ca. 12.

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CAP.



## CAP. XXII.

*The Court of the Admiralty proceeding according to the Civil Law.**Articuli Admiralitatis.**Articuli Admiralitatis.*

The Articles of the Admiralty.

¶ The proces and proceedings in this Court are in the name of the Lord Admiral.

The complaint of the Lord Admiral of *England* to the Kings most Excellent Majesty against the Judges of the Realm, concerning Prohibitions granted to the Court of the Admiralty *11 die Febr. ultimo die Termini Hillarii, Anno 8 Jac. Regis* : The effect of which complaint was after by his Majesties commandment set down in Articles by Doctor *Dun* Judge of the Admiralty ; which are as followeth, with answers to the same by the Judges of the Realm : which they afterwards confirmed by three kinds of Authorities in Law. 1. By Acts of Parliament. 2. By Judgments and judicial proceedings : and lastly, by Book cases.

The title of the Complaint.

Certain grievances whereof the Lord Admiral and his Officers of the Admiralty do especially complain, and desire redress.

1 Objection.

**T**hat whereas the consuance of all contracts and other things done upon the Sea belongeth to the Admiral Jurisdiction, the same are made triable at the Common Law, by supposing the same to have been done in Cheapside, and such places.

The Answer.

By the Laws of this Realm the Court of the Admiral hath no consuance, power, or jurisdiction of any manner of contract, plea, or querelle within any County of the Realm, either upon the Land or the Water : but every such contract, plea, or querelle, and all other things rising within any County of the Realm, either upon the Land or the Water, and also Wreck of the Sea ought to be tried, determined, discussed, and remedied by the Laws of the Land, and not before, or by the Admiral nor his Lieutenant in any manner. So as it is not material whether the place be upon the water *infra fluxum & refluxum aquæ* : but whether it be upon any water within any County. Wherefore we acknowledge that of contracts, pleas, and querels made upon the Sea, or any part thereof which is not within any County (from whence no trial can be had by twelve men) the Admiral hath, and ought to have jurisdiction. And no president can be shewed that any Prohibition hath been granted for any contract, plea, or querelle concerning any marine cause made or done upon the Sea, taking that only to be the Sea wherein the Admiral hath jurisdiction, which is before by Law described to be out of any County. See more of this matter in the Answer to the sixth Article.

The description and limitation of the (Sea) wherein the Lord Admiral hath Jurisdiction.

2 Objection.

When Actions are brought in the Admiralty upon bargains and contracts made beyond the Seas, wherein the Common Law cannot administer Justice, yet in these cases Prohibitions are awarded against the Admiral Court.

The Answer.

See hereafter in the proofs by Judgments and judicial presidents

Bargains or Contracts made beyond the Seas wherein the Common Law cannot administer Justice (which is the effect of this Article) do belong to the Constable and Marshal ; for the Jurisdiction of the Admiral is wholly confined to the Sea, which is out of any County. But if any Indenture, Bond, or other Specialty, or any contract be made beyond Sea for doing of any act or payment of any money within this Realm, or otherwise, wherein the Common Law can administer



minister Justice, and give ordinary remedy; In these cases neither the Constable and Marshal, nor the Court of the Admiralty hath any Jurisdiction. And therefore when this Court of the Admiralty hath dealt therewith in derogation of the Common Law, we find that Prohibitions have been granted, as by Law they ought.

Whereas time out of mind the Admiral Court hath used to take stipulations for appearance and performance of the Acts and Judgments of the same Court: It is now affirmed by the Judges of the Common Law that the Admiral Court is no Court of Record, and therefore not able to take such stipulations: and hereupon Prohibitions are granted to the utter overthrow of that Jurisdiction. 3 Objection.

The Court of the Admiralty proceeding by the Civil Law is no Court of Record, and therefore cannot take any such Recognisance as a Court of Record may do. And for taking of Recognisances against the Laws of the Realm, we find that Prohibitions have been granted, as by Law they ought. And if an erroneous sentence be given in that Court, no Writ of Error, but an Appeal before certain Delegates doth lie, as it appeareth by the Statute of 8 Eliz. Regina, 8 Eliz. cap. 5. which proveth that it is no Court of Record. The Answer.

That Charter-parties made only to be performed upon the Seas, are daily withdrawn from that Court by Prohibitions. 4 Objection.

If the Charter-party be made within any City, Port, Town, or County of this Realm, although it be to be performed either upon the Seas, or beyond the Seas, yet is the same to be tried and determined by the ordinary course of the Common Law, and not in the Court of the Admiralty. And therefore when that Court hath incroached upon the Common Law in that case, the Judge of the Admiralty and party suing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the Laws of the Realm. The Answer.

That the clause of Non obstante Statuto, which hath foundation in his Majesties Prerogative, and is currant in all other grants, yet in the Lord Admirals Patent is said to be of no force to warrant the determination of the causes committed to him in his Lordships Patent, and so rejected by the Judges of the Common Law. 5 Objection.

Without all question the Statutes of 13 R. 2. cap. 3. 15 R. 2. cap. 5. and 2 H. 4. cap. 11. being Statutes declaring the Jurisdiction of the Court of the Admiral, and wherein all the subjects of the Realm have interest, cannot be dispensed with by any Non obstante, and therefore not worthy of any answer: but by colour thereof, the Court of the Admiralty hath contrary to those Acts of Parliament incroached upon the Jurisdiction of the Common Law to the intolerable grievance of the subjects, which hath oftentimes urged them to complain in your Majesties Courts of ordinary Justice at Westminster. for their relief in that behalf. The Answer.  
13 R. 2. cap. 3.  
15 R. 2. cap. 5.  
2 H. 4. cap. 11.

To the end that the Admiral Jurisdiction may receive all manner of impeachment and interruption, the Rivers beneath the first Bridges, where it ebberth and floweth, and the Ports and Creeks are by the Judges of the Common Law affirmed to be no part of the Seas, nor within the Admiral Jurisdiction: and thereupon Prohibitions are usually awarded upon actions depending in that Court, for Contracts and other things done in those places; notwithstanding that by use and practise time out of mind, the Admiral Court have had Jurisdiction within such Ports, Creeks, and Rivers. 6 Objection.

The like answer as to the first. And it is further added, that for the death of a man, and of mayhem (in those two cases only) done in great Ships, being and hovering in the main Stream only beneath the points of the same Rivers nigh to the Sea, and no other place of the same Rivers, nor in other causes, but in those two only, the Admiral hath cognisance. But for all contracts, pleas, and querels made or done upon a River, Haven or Creek within any County of this Realm, the Admiral without question hath not any Jurisdiction, for then he should hold plea of things done within the body of the County, which are triable by verdict of twelve men, and merely determinable by the Common Law, and not within The Answer.



within the Court of the Admiralty according to the Civil Law. For that were to change and alter the Laws of the Realm in those cases, and make those contracts, pleas and querels triable by the Common Laws of the Realm to be drawn ad aliud examen, and to be sentenced by the Judge of the Admiralty according to the Civil Laws. And how dangerous and penal it is for them to deal in these cases, it appeareth by judicial presidents of former ages. See the answer to the first Article.

*The 7<sup>th</sup> Objection.*

That the agreement made in Anno Domini 1575. between the Judges of the Kings Bench and the Court of the Admiralty for the more quiet and certain execution of Admiral Jurisdiction, is not observed as it ought to be.

*The Answer.*

The supposed agreement mentioned in this Article hath not as yet been delivered unto us, but having heard the same read over before his Majesty (out of a paper not subscribed with the hand of any Judge) we answer, that for so much thereof as differeth from these answers, it is against the Laws and Statutes of this Realm: and therefore the Judges of the Kings Bench never assented thereunto, as is pretended, neither doth the phrase thereof agree with the terms of the Laws of the Realm.

*The 8<sup>th</sup> Objection.*

Many other grievances there are, which in discussing of these former will easily appear worthy also of reformation.

*The Answer.*

This Article is so general, as no particular answer can be made thereunto, only that it appeareth by that which hath been said, that the Lord Admiral his Officers and Ministers principally by colour of the said void Non obstante, and for want of learned advice have unjustly incroached upon the Common Laws of this Realm, whereof the marvail is the less, for that the Lord Admiral, his Lieutenants, Officers, and Ministers have without all colour incroached and intruded upon a right and prerogative due to the Crown, in that they have seized, and converted to their own uses goods and chattels of infinite value taken by Pirats at Sea, and other goods and chattels which in no sort appertain unto his Lordship by his Letters Patents, wherein the said Non obstante is contained, and for the which he and his Officers remain accountable unto his Majesty. And they now wanting in this blessed time of peace causes appertaining to their natural Jurisdiction, they now incroach upon the Jurisdiction of the Common Law, lest they should sit idle and reap no profit. And if a greater number of prohibitions (as they affirm) hath been granted since the great benefit of this happy peace, then before in time of hostility, it moveth from their own incroachments upon the Jurisdiction of the Common Law. So as they do not only unjustly incroach, but complain also of the Judges of the Realm for doing of Justice in these cases.

Touching our proceedings in granting of prohibitions concerning any of the said Articles, two things are to be considered of. First, the matter; and secondly, the manner. For the matter nothing hath been done therein by your Majesties Courts at Westminster, but by good warrant of Law and former judicial president. And for the manner, we have granted none in the time of Vacation, nor in the Term time in any of our Chambers, nor in the Court in the Term time ex officio, but upon motion made in open Court by learned Counsel, and after a day prefixed, and warning given to the adverse party, and upon reading of the Libel in open Court, and hearing of the Counsel learned of such of the parties as were warned and did attend.

The said answers are proved and confirmed (as is aforesaid) by three kind of Authorities in Law. First, by Authority of the High Courts of Parliament. Secondly, by Judgments and judicial Presidents. Thirdly, by Book-cases, and the Authority of our Books.

¶ 1. By Acts of Parliament.  
13 R.2. cap. 5.

Concerning the Acts of Parliament: It is enacted by the Statute made in 13 R.2. cap. 5. That the Admirals and their Deputies shall not meddle from henceforth with any thing done within the Realm of *England*, but only with things done upon the Sea, according to that which hath been duly used in the time of the Noble King *Edward* Grandfather of King R. 2. By which it is manifest, that



that the jurisdiction of the Court of Admiralty is only confined to things done upon the Sea, which the adverse party yielded, but claimeth by a colour of a Non obstante, &c. which is utterly void, as hath been said.

By the Statute of 15 R. 2. cap. 3. it is enacted and declared, That the Court of the Admiral hath no manner of consuance, power nor jurisdiction of any manner of contract, plea or querel, or of any other thing done or rising within the bodies of the Counties, either by Land or by Water, and also of wreck of the Sea, but all such manner of contracts, pleas, and querels, and all other things rising within the bodies of the Counties as well by Land as by Water, as is afore said, and also wreck of the Sea shall be tried, terminated, discussed, and remedied by the Laws of the Land, and not before, nor by the Admiral nor his Lieutenant in no manner. Nevertheless of the death of a man, and of a mayhem done in great Ships, being and hovering in the main stream of the great Rivers only beneath the points of the same Rivers, and in no other place of the same rivers, the Admiral shall have consuance. This latter clause giveth the Admiral further jurisdiction in case of death and mayhem, (with neither of which we ever medled) but in all other happening within the Thames, or in any other River, Port, or water, which are within any County of the Realm, (as all Rivers and Havens be, as hereafter shall manifestly appear) by express words of this Act of Parliament, the Admiral or his Deputy hath no jurisdiction at all. Wherein it is to be observed, how curious the makers of this Statute were to exclude the Admiral of all manner of jurisdiction within any water which lieth within any County of the Realm.

Nota, The Lord Admiral hath greater jurisdiction in case of the death of a man, and mayhem, then in other cases.

The Statute of 2 H. 4. cap. 11. enacteth, That the said Act of 13 R. 2. cap. 5. be firmly holden and kept, and put in due execution, and further at the prayer of the Commons that as touching a pain to be set upon the Admiral or his Lieutenant, that the Statute and Common Law shall be holden against them, and the party grieved shall recover his double damages. By which Act it appeareth, that the Statute of 13 R. 2. is but an affirmation of the Common Law, as shall also manifestly appear hereafter.

Which three Acts cannot be dispensed withal by a Non obstante, as hath been said before, but remain in full force, and have been put in due execution in all ages.

This Statute of 27 Eliz. c. 11. describeth particularly the limits of the Lord Admirals jurisdiction in these words. All and every such of the said offences before mentioned, as hereafter shall be done on the main Sea, or coasts of the Sea, being no part of the body of any County of this Realm, and without the precinct, jurisdiction and liberty of the Cinque Ports, and out of any Haven or Pier, shall be tried and determined before the Lord Admiral, &c. So as by the judgment of the whole Parliament the jurisdiction of the Lord Admiral is wholly confined to the main Sea, or Coasts of the Sea being no parcel of the body of any County of this Realm.

And by these four Acts of Parliament all the said objections that have been made, or can be made against the proceedings of the Kings Courts at Westminster (being grounded on the same) are fully answered. And we will conclude this first part with the saying of God himself. Almighty God (as he himself out of a whirlwind spake) hath shut up the Sea within certain dozes and bonds, Quis conclusit ostiis mare, quando erumpebat, quasi de vulva procedens: circumdedit illud terminis meis, & posui vectem & ostia, & dixi, Usque huc venies, & non procedes amplius, & hic confringes tumentes fluctus ejus. Job 38. 8. 10, 11.

Concerning the second kind of proof, viz. by Judgments and judicial presidents, every of them in all successions of ages in serie temporis, taking some in every age for many that might be cited.

Register Origin. fol. 129. F. N. B. 114. If goods be taken from an English man in Spain beyond the Sea, and the party cannot obtain justice there, he shall have a writ to the Sherif to arrest the body of the offenders, and to seise of their goods to the value: which proveth that the Admiral cannot hold plea thereof, for that the

¶ 2. By Judgments and judicial presidents.

Regist. Origin. fol. 129. F. N. B. 114.



the party hath remedy by the Common Law, and the Admirals power is only Super altum mare.

Hil. 6 H. 6.  
Rot. 303, in Banc.

In Portu.

Hil. 6 H. 6. Rot. 303. in the Court of Common Pleas between John Burton Plaintiff, and Bartholomew Put Defendant, the case was this upon the said Statutes. The said Bartholomew sued the said John Burton in the Admiral Court befoze Thomas Duke of Exeter then Admiral of England, for that the said John Burton with force and arms the second day of September, an. 1 H. 6. thre Ships of the said Bartholomew with his prisoners and merchandizes to the value of 960 marks, 5 s. 5. d. ob. in the same Ships being, did take and carry away, supposing by his libel the same to be taken away, super altum mare, upon the high Sea. Although the taking aforesaid was infra corpus Comitatus in Brittow ( the said Ships lying in the haven of Brittow ) and not upon the high Sea, contrary to the form and effect of the said Statutes ; the parties descended to an issue, which was found for the Plaintiff and damages assessed for the Plaintiff to 700 l. And it appeareth by the Record, that this being the first case that we can yet find that received judgment in the Court of Common Pleas upon the said Statutes, the same depended in advisement and deliberation eight Terms : and then the record saith, Et super hoc audito tam recordo quam veredicto prædicto, & per Curiam plenius intellectus : Consideratum est quod præd' Johannes Burton recuperet vers' præfat' Bartholomæum damna sua prædicta occasione attachamenti, prosecutionis, & vexationis, quam misarum & custagiorum ad septingentas libras per Juratores præd' superius assess' in duplum per statutum, &c. quæ damna in duplo se extendunt ad mille & 400 l. & idem Barth. poenam decem librarum erga Dominum Regem nunc per idem Statut' incurrat, & capiatur, & querens remittit 400 l. Upon which Judgment four things are to be observed. First, That it is contemporanea expositio, being made within twenty years of the making of one of the said Statutes, and contemporanea expositio est optima. Secondly, That albeit the said thre Ships with the prisoners and merchandizes in them lay in the haven, inter fluxum & refluxum aquæ, and infra primos pontes, yet that the haven is infra corpus Comitatus, and that for taking of the Ships and the prisoners, and merchandizes in the same no suit ought to be in the Admiral Court, but at the Common Law. Thirdly, That the Court of Admiralty hath no jurisdiction but super altum mare. which is not within any County, for the Record saith, that the said thre Ships with the prisoners and merchandize in the same, did lie infra Comitatu Brittolie, & non super altum mare, as the Plaintiff in the Admiral Court supposed the same to be. Lastly, That judgment so solemnly, and with such advisement given, if it were alone, were sufficient to give full satisfaction in this point : for Judicium est tanquam juris dictum, and Judicium pro veritate accipitur. But to proceed.

Pasch. 12 H. 6.  
Rot. 124, in Banc.

In Portu.

2 Mich. 31 H. 6.  
Rot. 315, in Banc.  
Hil. 2. Ph. & Mar.  
Rot. 120. Cr. a  
prohibition upon  
a Charter-party.  
Hil. 17 Eliz. Rot.  
470. Cr. Spencers  
case, and infinite  
others upon Char-  
ter-parties.

Pasch. 12 H. 6. Rot. 124. a like action brought by Robert Cupper upon the said Statutes in the Court of Common Pleas (reciting the said thre Statutes) against J. Rayner of Norwich, for that the said Rayner did sue the said Cupper in the Court of Admiralty befoze J. Countee of Huntingdon and Ivery Lieutenant to John Duke of Bedford Admiral of England, for that Rayner having a Ship In Portu aquæ Jernemuthæ infra corpus Com Norff. ready for a Voyage to Zealand, the said Cupper entered the said Ship lying in the said haven, and took away divers goods in the same being, asserendo per prædictum placitum res illas super altum mare emeruisse, ac si res illæ super altum mare emerissent cum non ibi, sed apud Jernemutham contra formam statutorum præd' which also proveth that the haven is within the body of the County.

In the same Term in the same Court a like action between John Widewell and the said John Rayner, Rot. 123. which with many others being to one effect we omit.

a Mich. 31 H. 6. Rot. 215. between William Hore, and Jeffery Unton for a suit in the Court of Admiralty befoze Henry Duke of Exeter, Admiral of England, concerning a contract of fourscore pounds upon a Charter-party of a Ship of the said Jeffery called the Trinity of Harlew to go from the Port of

Pole



Pole towards the parts of Meland, cum contra stus ille apud novam Sarum infra corpus Comitatus, & non super altum mare factus & junctus fuit, contra formam statutorum præd'. The Defendant pleaded to issue, which was found against him, and damages assessed to a hundred marks, and costs to forty pound: and thereupon judgment is given by the Court, that he should recover his damages in duplo, according to the Statute, &c. Which judgment directly proveth, that if a Charter-party or any other contract be made within City, Town, or County of the Realm, though the performance thereof be to be done and performed upon the high Sea, yet the Admiral hath no jurisdiction, because it may be tried by the Common Law, as by the said Record it appeareth. But where the whole is to be done supra altum mare, and no part of it infra corpus Comitatus, the Admiral hath jurisdiction.

The Statute of 32 H. 8. c. 14. Concerning freights of Ships giveth to the Lord Admiral or his Deputy power to make Certificate concerning the Ships of Aliens in Ports, &c. And if the Lord Admiral or his Deputy be not resident, then it giveth power to the Customer and Controller, or their Deputy to make Certificate: but without question this giveth no power to the Lord Admiral to hold plea of freights of Ships more then he had before, no more then it doth to the Customer and Controller, to whom equal power is given by the Act to make Certificate concerning the Ships of Aliens, &c. in the absence of the Lord Admiral or his Deputy, as to the Lord Admiral or his Deputy being present; and yet no man will affirm, that the Customer and Controller can hold plea of freights.

Mich. 38 H. 6. Rot. 36. cr. A Premunire brought by John Cassy Esq; Qui tam, &c. against Richard Beauchamp, Thomas Paunce Esquires, and others upon the Statute of 16 R. 2. for suing in Curia Romana vel alibi, of matters belonging to the Common Law. For that the Defendant did sue the Plaintiff in the Admiral Court before Henry Duke of Exeter, that the said John Cassy did take and carry away certain Jewels super altum mare, ubi idem Johannes Cassy bona illa apud Stratford at Bowe infra corpus Comitatus Midd' & non super altum mare cepit, which is so evident, and of so dangerous consequent, as no application shall be made thereof.

Mich. 38 H. 6.  
Rot. 36. cr.

In the book of Entries fol. 23. tit. Admiralty, it appeareth that the taking of a Ship called the Trinity of London lying upon the River at E. in the County of Kent is not super altum mare, but infra corpus Comitatus Cantia. And therefore a suit for the taking of that Ship lying there in the Admiral Court before John Earl of Huntingdon Admiral of England appeareth to be against the said Statutes, and yet no question that taking was infra fluxum & refluxum maris, & infra primos pontes.

Book of Entries.  
fol. 23.

9 H. 7. A Premunire brought for a suit in the Admiral Court before John Earl of Oxford for taking and carrying away, quandam naviculam apud Horton Key at Southlyn, &c. supposing the same to be super altum mare, where it was infra corpus Comitatus.

Book of Entries;  
ubi supra.

Mich. 16 H. 8. Rot. 140. The River of Thames at Belinsgate is not within the jurisdiction of the Admiral, but infra corpus comitatus.

Mich. 16 H. 8.  
Rot. 140.

35 H. 8. A prohibition to John Dudley Knight, Viscount Lisle for holding plea in the Court of Admiralty for a contract made in Rivo Thamesia, supposing the same to be super altum mare, where in truth it was in Rivo Thamesia apud B. in Com' Essex, which notwithstanding was infra fluxum & refluxum aquæ, & infra primos pontes.

Book of Entries.  
ubi supra.

Hil. 36 H. 8. Rot. 38. cr. The like prohibition inter Wheler & Warner, Eodem termino Rot. Inter Tooley & Lewes, a prohibition for a contract made at Danlike, in partibus transmarinis. And in 2 Jac. Regis, the whole Court of Common Pleas, because the libel supposed the Act to be done in partibus exteris & transmarinis, granted a prohibition.

Hil. 36 H. 8.  
Rot. 38. cr.

Trin. 38 H. 8. Rot. 126. between Crane and Bell a promise made at Dertmouth, that a Ship called the Mary Fortune should pass safely without taking and surpriſing, &c. which Ship was after taken by the Spaniards super altum mare,

Hil. 2 Jac. Regis.  
In communi Banc.  
Int' Theodor Banc.  
linsun Quer' &  
Philips Def.  
Tr. 38 H. 8. Rot.  
126.



is not determinable in the Court of the admiralty, for that albeit the taking was upon the high Sea, yet the promise was made upon the land, whereupon an action doth lye at the Common Law.

Tr. 3 & 4 Ph. & Mar. Rot. 709. in Banco.

Trin. 3 & 4 Ph. & Mar. Rot. 709. between Lawrence Masherode, and Richard Wyn, a prohibition out of the Court of Common Pleas to the Court of the Admiralty, William Lord Howard then Lord Admiral being.

Eodem Termino Rot. 811. in Banc.

Trin. 3 & 4 Ph. & Mar. Rot. 811. the like prohibition granted out of the same Court to the Court of Admiralty between Robert Inne Plaintiff, and Roger Garland Defendant.

Hil. 4 & 5 Ph. & M. Rot. 831.

Hil. 4 & 5 Ph. & Mar. Rot. 831. the like prohibition.

Many are the presidents in the Reign of the late Queen Eliz. in the Court of Common Pleas, the Kings Bench and Exchequer, which we purposely omit, and insist rather upon the more ancient, yet one or two we will remember concerning things happening beyond Sea, whereupon an action did lye at the Common Law agreeable with the president in the Reign of H. 8.

Mich. 39 & 40 El. Rot. 3158.

Mich. 39 & 40 Eliz. Rot. 3158. A prohibition out of the Court of Common Pleas for a suit in the Admiral Court upon a bill under the parties hand and seal for French crowns, for that the bill was made beyond Sea.

Mich. 3 Jac. in Scaccar.

And Mich. 3. Jac. a prohibition was granted in the like case to the Admiral Court by the Court of Exchequer, for Sir John Swinarton having the privilege of that Court for a matter rising beyond the Sea. And divers prohibitions granted also in the like case in the Kings Bench.

See in the Chapt. of the Court of the Constable, and Marshal.

For causes of actions which are transitory done out of the Realm, an action may lye at the Common Law, but if the cause be criminal or local done beyond Sea, then before the Constable and Marshal only.

¶ 3 By book-cases and authorities in Law.

Concerning the last manner of proof, viz. by Book-cases and authorities of our books.

Temps E. 1. Avowry 192. in Comuni Banc.

In the Register the most ancient book of the Law, fol. F. N. B. fol. 87. I. & 88 F.

In Temps E. 1. Tit. Avowry 192. a Keplevin was brought for the taking of a Ship in the Coast of Scarborough in the Sea, and for carrying the same from thence into the County of N. Muford the Plaintiff counteth of a taking in the Coast of Scarborough, which is neither Town nor place, out of which a Jury may be taken, for that the Coast is four miles long, and also of a thing done in the Sea, this Court hath no consuance, for certain judgment is given thereof to Mariners. Berry Chief Justice of the Common Pleas; the King willeth, that the peace be as well kept on the Sea, as on the Land, and we find that you are come hither by due process, and therefore ruled him to answer. Out of which four things are to be observed. First, That it is called the Sea which is not within any County from whence a Jury may come. Secondly, That the Sea (being not within any County) is not within the jurisdiction of the Court of Common Pleas, but belongs to the Admiral jurisdiction. Thirdly, That when the Ship came within the River, then it is confessed to be within the County of Northumberland. Lastly, That when a taking is partly on the Sea, and partly in a River, the Common Law shall have jurisdiction.

8 E. 2. tit. Coron. 399.

8 E. 2. tit. Coron. 399. It is no part of the Sea, where one may see what is done of the one part of the water, and of the other, as to see from one Land to the other, that the Coroner shall exercise his office in this case, and of this the Country may have knowledge; whereby it appeareth that things done there are triable by the Country (that is, by Jury) and consequently not in the Admiral Court.

43 E. 3. Vid. 5 E. 3. 3. Tit. Replevin. 41.

43 E. 3. Norff. as the said Lord Dier voucheth the Record in Mich. 15 & 16. El. saying (quod vidi) the case was, that the Abbot of Ramsey was seised of the mannoz of Brancafter in Norff. bordering upon the Sea, upon sixty acres of marsh of which mannoz the Sea did flow and reflow; and yet it was adjudged parcel of the Abbots mannoz, and by consequence within the body of the County unto the low water mark.

Pasch. 17 El. in Scaccario.

And it was adjudged Pasch. 17 El. in the Exchequer, D'gas being Plaintiff, that



that the Land between the flowing and reflowing of the Sea belonged to the Lord of the Mannor adjoining, as the Lord Dier doth there report.

48 E. 3. 3. If a mariner makes a covenant with me to serve me in a Ship upon the Sea, yet si lower ne soit pay, it shall be demanded in this Court by the Common Law, & ne per la Ley de mariner.

46 E. 3. tit. Conusans 36. An Action of Trespass was brought for taking of a Ship in the Haven of Hull against certain persons; the Mayor and Bailiffs of Hull demanded conusans by the Charter of the King granted unto them, that the Citizens and Burghesses of Hull should not be impleaded alibi de aliquibus transgressionibus, conventionibus & contractibus infra burgum, &c. quam infra burgum. And the Conusans was granted; which proved that the Haven of Hull where the Ship did ride was infra Burgum de Hull, and by consequence Infra corpus comitatus, and determinable by the Common Law, and not in the Admiral Court.

7 R. 2. tit. Trespass in Statham pl. 54. In Trespass for a Ship and certain Merchandize taken away (which Trespass must of necessity be alledged in some Town and County in some River or Haven) the defendant pleaded, that he did take them In le haut mere ove les Normans queux sont enemies le Roy. And it is ruled a good plea, which concurrereth with the other books.

7 H. 6. 22. 35. An Action lieth at the Common Law for forestalling, &c. in a Port or Haven, for that it is infra corpus comitatus, and triable by the Common Law, and by consequence the Admiral hath no Jurisdiction there.

19 H. 6. 7. The Statute doth restrain that the Admiral shall not hold plea of any thing rising within any of the Counties of the Realm, but executions he may make upon the Land. And therefore where it is said in 22 Ass. pl. 93. that every water which flows and reflows, is an Arm of the Sea, yet it followeth not that the Admiral shall have Jurisdiction there, unless it be out of every County, or else such a place whereof the County cannot take knowledge, as it appeareth in the book of 8 E. 2. before cited. But of this more hereafter.

Fortescue cap. 32. fo. 38. Nam si quæ super altum mare extra corpus cujuslibet comitatus regni illius fiant quæ postmodum in placito coram Admirallo Angliæ deducantur per testes, illa juxta legum Angliæ Sanctiones terminari debent, which proveth by exprels words that the Jurisdiction of the Admiral is confined to the high Sea, which is not within any County of the Realm.

2 R. 3. fo. 12. Hibernici sunt sub Admirallo Angliæ de re facta super altum mare, which agreeth with the former, viz. that the Jurisdiction of the Admiral is super altum mare.

Stanford. lib. 1. pl. cor. fo. 51. b. If one be slain upon any Arm of the Sea, where a man may see the Land of the one part and of the other, the Coroner shall inquire of this, and not the Admiral, because the Country may take constance of it, and doth vouch the said Authority of 8 E. 2. whereupon he concludeth in these words. So this proveth, that by the Common Law before the Statute of 2 H. 4. &c. the Admiral had no Jurisdiction but upon the high Sea, which only Authority were sufficient to overrule all the said questions. For hereby appeareth, that the Jurisdiction of the Admiral is only confined by the Common Law to the high Sea, and agreeth with all the former Book cases and Acts of Parliament.

4 & 5 Ph. & Mar. Dier 159. b. By the Libel in the Admiral Court the cause is supposed to commence *Sur le haut mere* & infra Jurisdictionem *del Admiralty*, ubi revera facta fuit in tali loco infra corpus comitatus & non super altum mare. Whereby it also appeareth, that the Lord Admirals power is confined to the high Sea.

Pasch. 28 Eliz. in the Kings Bench the case was, that a charter-party by deed indented, was made at Thetford in the County of Norfolk, between Evangelist Constantine of the one party, and Hugh Gynne of the other part, by the which Constantine did covenant with Gynne that a certain Ship should sail with merchandizes and goods of Hugh Gynne to Muttrell in Spain, and there should remain by certain days, &c. Upon the breach of which Covenant Gynne brought an



Action of debt of 500 li. upon a clause in the same Charter, and alledged the breach of the Covenant, for that the Ship did not remain at Mutterel in Spain, by so many days as were limited by the Covenant. Whereupon issue was taken and tried before Sir Christopher Wray Chief Justice of England, and found for the plaintiff: and in arrest of Judgment it was shewed, that this issue did rise out of a place totally and mixtly in a forrein Kingdom out of the Realm, from whence no Jury of twelve men could come, and therefore the trial was insufficient. But it was adjudged by Sir Christopher Wray, Sir Thomas Gawdy, and the whole Court of Kings Bench after great deliberation, that the plaintiff should recover 500 li. besides his damages and costs, for that the Charter party whereupon the action is brought was made at Thetford within this Realm, and that the trial being in the same place where the action was brought, was sufficient.

Mich. 30 & 31.  
Eliz. coram Rege.

And the like case was after adjudged in the same Court, Mich. 30 & 31 Eliz. in an Action upon the case upon an Assumpsit grounded upon an instrument called a Policy, commonly made between Merchants for assurance of their goods, whereby the undertaker did assume that such a Ship should sail from Melcombe Regis in the County of Dorset unto Abville in France safely without violence, &c. and declared that the said Ship in sailing towards Abville, that is to say, in the River of Somme in the Realm of France, was arrested by the French King, &c. whereupon issue was taken and tried, where the Action upon the Assumpsit was brought, and again the validity of the trial newly questioned, and in the end resolved and adjudged as before: which Judgment proves, that where part of the contract or other thing is made in any place within any of the Counties of the Realm, though the performance thereof be upon the high Sea, the trial and determination of the whole Act belongeth to the Common Law, and consequently the Court of the Admiralty ought not to deal therewith.

These answers being delivered to King James, magna est veritas & prevalet.

¶ The Kings Prerogative of the Sea, &c.

¶ The Antiquity of the Court of Admiralty long before the Reign of E. 3. in whose days some have dreamed it began.

\* In Archivis in Turri London.

This cause was handled in or about the 22 year of E. 1. as by divers parts of the Record it appeareth.

Admiral of the Sea of England.

Time out of mind

Laws, Statutes and Ordinances.

Now for the great prerogative and interest that the King of England hath in the Seas of England, and for the Antiquity of the Court of the Admiralty of England, and of the name of the Admiral, we have seen an ancient and a notable Record intituled, De superioritate maris Angliæ & jure officii Admiralitatis in eodem. \* So much whereof as we find in Archivis regis, we will transcribe de verbo in verbum, as it is in the Record it self.

*A tous Seigneurs Auditors Deputes per le Rois de Engleterre & de France a redresser les damages faits as gents de leur Roialmes & des auters terres subgits a leur seignuries per mer & per terre en temps de pees & de trewes. Monstrent les procurours de Prelats & Nobles, & del Admirall de la mier d'Engleterre & de Comminalties des Cities & des Villes, & des Marchants, Mariniers, Messagiers, & pelerins & des tous aultres du dit Roialme d'Engleterre & des aultres terres subgits a la seignurie du dit Roy d'Engleterre & daillours sicome de la marine de Genue, Cateloigne, Espaigne, Alemaigne, Seland, Hoyland, Frise, Denemarch, & Norway & de plusours aultres lieux del Empier, que come les Roys d'Engleterre per raison du dit Roialme du temps dont il ny ad memoire du contrarie eussent este en paiceable possession de la souveraigne Seignurie de la mier d'Engleterre & des Isles ysteants en yeele per ordinance & establisment des lois, estatuts, & defenses & des vesseaux autrement garnies que vesseaux de merchandise & de seurte prendre & saine gardes doner en tous cas que mestier serra & par ordinance entre tout manere des gents taunt d'autre seignurie come de leur propre de*

tons

tous aultres faitz necessaries a la garde de pees, droiture & equitie par  
 elongues passants & per souveraigne garde & toute manere de conifance  
 & Justice haulte & basse sur les dites lois, estatuts, ordenances, & de-  
 fenses, & pur tous autres faits queux a le gouvernement de souveraigne  
 Seignurie appartenir purrent es lieux avandits. Et A. de B. Admirall  
 de la dit mier deputez per le Roy d'Engliture, & tous les aultres Admi-  
 rals par mesme celuy Roy d'Engliture & ces ancestors jades Royes d'En-  
 gliture eussent este en paisseable possession de la dit souveraigne garde ove la  
 conifance & Justice & tous les aultres appurtenances avanditiz forprise  
 en case dappele & le querele fait de eux a lour Souveraignes Roys d'En-  
 gliture de defalte de droit ou de malvais judgement, & especialment pur  
 empeschement metre & justice faire seurte prendre de la pees de tout ma-  
 nere de gents usants armes en la dit mier ou menans niefs aultrement appa-  
 reillies ou garnies que n'appertient au nief de marchants & en tous aultres  
 points en queux homme poit avoir reasnable cause de suspicion vers eux  
 de robbery, ou des aultres mesfaitz. Et come le maistre de Niefs du dit  
 Royaume d'Engliture en absence des dits Admirals eussent este en paisseable  
 possession de conifire & juger des tous faits en la dite mier entre tous  
 manere de gents selonc les lois, estatuts & les defenses, franchises & cu-  
 stumes.

Et come en le primer article de lalliance nadgaires faite entre les dites  
 Roys en les traites sur le darreine pees de Paris soient comprises les pa-  
 roles que sensuient en une sedule annexe a yceste.

Primerment il est traite & accorde entre nous & les messagers & les  
 procurours de surdiz en nom des dits Roys que yceux Roys serront lun a  
 l'autre desores en avant bons verrois & loyaulx amies & eydans cointre  
 tout homme sauve Lesglise de Rome en tiels manere que si ascun ou plu-  
 sours quicunquez ilz fuissent voloient deponticer, empescher, ou troubler les  
 dits Roys en franchises & liberties, priveledges es droitz, es droitures, ou  
 es custumes de eux & de lour roialmes quilz serront bons & loyaux amys  
 & aidans contre toute homme que puisse venire & morir a defendre,  
 gardir & maintenir les franchises, les liberties, les priveledges, les droitz,  
 les droitures, & les custumes de susdites, except le dit Roy d'Engliture  
 Monsieur John Duc de Breban en Brabant & ses heires descendus de  
 luy & de la fille le Roy d'Engliture, & except pur le dit nostre Seig-  
 nior le Roy de France excellent Prince Dubert Roy d'Alemaigne ses  
 heires Roy d'Alemaigne, & Monsieur Johan Counte de Henan en He-  
 nan, & que lun ne serra en consaile ne en aid ou l'autre perde vie, mem-  
 bre, estate ne honour temporel. Monsieur Reymer Grimbald maistre de  
 la nary du dit Roy de France que se dit estre Admirall de la dit mier  
 deputez per son Seignior avantdit pur sa guerre contre les Flemuings  
 apres le dite alliance faite & affirmee contre le forme & la force de mesme  
 lalliance & l'intention de ciens qui la firent l'office del Admirall en la  
 dite mier d'Engliture par commission du dit Roy de France torceusement  
 emprist & usa un an & plus en pernant le gents & marchants du Royaume  
 d'Engliture & daillours per la dite mier paissaints ovesque lour biens  
 & les gents ainsi prises livra a la prison de son dit Seignior le  
 Roy de France lour biens & marchandizes a les rescervoirs per mesme  
 celuy Roy de France a ceo deputez en les Ports de son dit Royaume come

De Botetort,  
 Admiral of the  
 Sea.  
 Note for the anti-  
 quity of the Admi-  
 ral of England.  
 The said De Botetort was Admiral  
 of the Sea coasting  
 upon Yarmouth  
 in Norfolk (right  
 over against  
 France) and of  
 that station in  
 Anno 22 E.1.

The League be-  
 tween E.1. and  
 the French King.

Margaret the third  
 daughter of E.1.  
 was married to  
 John the Duke of  
 Brabant, An.Dom.  
 1290.

Monsieur Reymer  
 Grimbald Master  
 of the French  
 Navy.



The Admiral of  
England to whom  
the consuance ap-  
pertains, &c.

a luy forfait & acquis fist amener per son judgement & agard, & la prise & detenu des dites gentz ove leur dites biens & marchandizes & son dit jugement, & agard sur la forfaiture de caux & acquest ait justifie devant vous seigneurs Auditors eniescripts per my l'autorite de sa dite commission sur l'Admiralte avandite per lui ainsi usurpe & per une descense communement fait per le Roy d'Engliture per my son poer lelong la forme de le tiers article de lalliance avandite qui contient les paroles desuscripts en requerant que de ceo il en fuisse quitz & absoluts en grand damage & prejudice du dite Roy d'Engliture & des Prelats & Nobles & aultres desusnoms. Purquoy les dits procurours & les noms de leurs ditz Seigneours a vous Seigneours Auditors avanditz pryent que deliverance deve & hastine des dites gent. ovesq; leur biens & marchandises ainsi prises & detenues faicets estre fait al Admiral du dit Roy d'Engliture a qui la cognisance de ceo apertient de droit sicome dessus est dit ainsi quilz sauns disturbance de vous & d'autre puisse de ceo conoistre & faire ceo que apertient a son office avantdit. Et que le dit Monsieur Reymer soit condempne & distreint a faire du satisfaction a touts les dits damages seavant come il purra suffire & en sa defalte son dit Seignior le Roy de France per que il estoit deputez al dit office, & que apres deve satisfaction faitz as dits damages le dit Monsieur Raymer soit si duement punis pur le blemissement de ladite alliance, que la punission de luy soit as aultres example pur temps a venir.

*Item in alio Rotulo annexo.*

Admiral of  
England.

*Item, a la fin que venes & consideres les formes des proces & les letters ordenees per les consailers le Aiel nostre Seignior le Roy, &c. especialment a retenir & maintenir la souverain que ses dits ancestors Roys d'Engliture soloient avoir en la dite mier d'Engliture, quant al amendment declaration & interpretation des lois per eux faites a gouverner touts maneres des gentz passants per la dit mier. Et primerement a son Admiral & as Maistres & Mariners des Niefs de Cync ports d'Engliture, & des autres terres annexes a la corone d'Engliture emendant a sa armee en la dite mier pur retenir & maintenir la garde des lois avantditz, & la punission de touts faitz al encontre en la mier susdite.*

*Item in alio Rotulo de Articulis super quibus Justiciariz domini Regis sunt consulendi de Anno regni regis E.3.12.*

\* E.1. avus E.3.

*Item ad finem quod resumatur & continuatur ad subditorum prosecutionem forma procedendi quondam ordinata & inchoata per\* avum domini nostri regis & ejus consilium ad retinendum & conservandum antiquam superioritatem maris Anglia, & nos officii Admiralitatis in eodem quoad corrigendum, interpretandum, declarandum & conservandum leges & statuta per ejus antecessores Anglia Reges dudum ordinata ad conservandumpacem & justitiam inter omnes gentes nationis cujuscunque per mare Angliae transcuntes, & ad cognoscendum super omnibus in contrarium attemptatis in eodem, & ad puniendum delinquentes & damna passis satisfaciendum. Quae quidem leges & statuta per dominum Richardum quondam regem Angliae in reditu suo a terra sancta correctae fuerunt, interpretata & in insula Olyron publicata & nominata in Gallica lingua La Ley Olyron.*

R. 1.  
Insula de Olyron  
in Gallia.

And

And long before this King Edgar in his Charter saith thus : Mihi concessit propitia Divinitas cum Anglorum imperio omnia Regna insularum Oceani cum suis ferocissimis regibus usque Norwegiam ac maximam partem Hiberniæ cum sua nobilissima Civitate de Dublin Anglorum Regno subjugare, &c. See this Charter in the Epistle to the 4 book of Reports.

We have also found a Record in 10 E.3. in these words.

Rex dilecto & fideli suo Galfrido de Say Admirallo Flotæ suæ Navium ab ore aquæ Thamesiæ vers' partes occidentales, salutem. Cum nuper vobis per literas nostras mandaverimus quod vos una cum quibusdam navibus de quinque portibus nostris quas de guerro pro obsequio nostro muniri & parari mandavimus supra mare proficiscerimini ad obviamd' & resistend' quibusdam galeis in diversis partibus exteris provisis & hominibus armatis munitis quæ ad partes Domini nostri ad gravand' nos & gentes nostras, vel ad partes Scotiæ in inimicorum nostrorum ibidem succursum divertere ut accipimus proponebant. Et quia jam nobis ab aliquibus est relatum quod galeæ hujusmodi usque ad numerum viginti & sex ad partes Britan' & Norman. noviter accesserunt & ibidem adhuc se tenent ad mala, ut creditur, contra nos & nostros quæ poterunt perpetrand', vel ad succurrend' dictis nostris, ut prædicatur, inimicis. Nos advertentes quod progenitores nostri Reges Angliæ Domini maris Anglicani circumquaque & etiam defensores contra hostium invasiones ante hæc tempora extiterunt, & plurimum nos taderet, si honor noster regius in defensione hujusmodi nostris (quod absit) deperiat temporibus, aut in aliquo minuatur, cupientesq; hujusmodi periculis auxiliante Domino obviare, ac salvationi ac defensionem Regni & populi nostrorum providere, malitiamq; hostium nostrorum refrenari : Vobis in fide & ligeancia quibus nobis ascripti estis, & sicut de vobis specialiter confidimus, mandamus firmiter injungendo quod statim visis presentibus & absq; ulteriori dilatione naves portuum prædictorum, ac alias naves quæ jam paratæ existunt supra mare teneatis, &c. Rot. Scotiæ 10 E.3. m. 16.

And because the Reader by this Record shall discern, that of ancient time there were several Admirals ( for the wisdom of those days would not trust one man with so great a charge, nor any man to have a certain estate in an office of so great trust : ) I will briefly give the Reader such light thereof as I have found of Record.

Rex commisit Galfrido de Lucy maritimam Angliæ custodiend' quamdiu Domino Regi placuerit, &c. Rot. Pat. anno 1 H.3.

Rex commisit Richardo Aguillum marinam Regis Norff. & Suff. &c. quamdiu nobis placuerit. Rot. Pat. anno 9 H. 3.

Petrus de Rival capitaneus Pictanie habet ad totam vitam suam custodiam omnium Portuum & totius costeræ marinæ Angliæ, excepto Portu de Dovor, qui est in custodia Huberti de Burgo. Rot. Cart. 15 H.3.

Willielmus de Leybourne constituitur capitaneus nautarum & marinariorum de Regno & potestatis Regis, quamdiu Regi placuerit. Rot. Vascon. 22 E. 1. m. 8.

Willielmus de Leybourne Admirallus Angliæ. Rot. Pat. 23 E.1.

Willielmus de Leybourne capitaneus marinariorum, &c. 2 parte Pat. anno 25 E.1. m. 14.

To let you know what we have observed in those times : there were also two other, the one had the government of all the Fleet from the mouth of the Thames Westward, and the other from the mouth of the Thames Northward. Claus. iu Dorf. m. 18.

Johannes Botetort custos Regis Portuum maritimorum versus partes Boreales. 1 parte Pat. 25 E. 1. m. 9.

Nicholaus Kyriell constituitur Admirallus flotæ omnium Navium ab ore aquæ Thamesis tam quinque Portuum, quam aliorum Portuum & locorum per costeram maris versus partes occidentales, quamdiu Regi placuerit. Teste Rege apud Turrin London 8 Decembris. 1 parte Pat. 10 E.3

Robertus



Claus. 15 E. 2.  
Pat. 15 E. 2. Teste  
Rege apud Ebor.  
19 Maii.

Robertus de Leyborn Admirallus quarundam Navium Regis sup mari occidentali.  
Robertus Battayli Admirallus flotæ Navium ab ore aquæ Thamefis de singulis  
Portubus versus austrum.

1 parte Pat. anno  
1 E. 3. m. 21.

Johannes Perbrome constituitur capitaneus, & Admirallus flotæ Navium magnæ  
Geremuthe & omnium aliorum locorum ab ore aquæ Thamelis per costeram mar-  
ris versus partes Boreales, quamdiu &c Teste Rege apud Stanf. 21 Aprilis.

2 parte Claus.  
12 E. 3. in Dorf.

Warrosius de Valloignes constituitur capitaneus & Admirallus flotæ Navium ab ore  
aquæ Thamelis tam quinque Portuum quam aliorum Portuum & locorum per  
costeram maris versus partes occidentales, quamdiu, &c. ut supra.

Petrus Bard Admirallus Navium ab oræ aquæ Thamelis versus partes occidentales.  
18 Augusti.

Thomas de Drayton Admirallus ab ore aquæ Thamelis versus partes Boreales.  
18 Augusti.

And so in the Reigns of R. 2. H. 4. H. 5. H. 6. But in these and in former times  
there was a great Admiral of England, Vid. supra p. 142, 143, 144.

Rot. Pat. an. 14 H.  
6. 25 Oct. 18 E. 4.

The King did by Charter constitute John Holland Duke of Exeter and Henry  
his son to be Admirallus Angliæ, Hiberniæ, & Aquitaniæ, pro termino vitæ.

This Charter being of a judicial office and granted to two, we hold to be  
void: for such ancient offices must be granted as they formerly have been. This  
Duke is he that is mentioned in the former Records, who being a great Peer  
of the Realm endeavoured to incroach upon the Common Law, but the sub-  
jects by course of Law were defended and recompensed.

Rot. Parl. 7 H. 4.  
nu. 19, 20. & c. 26. &  
142. 9 H. 4. nu. 19.

The Merchants, Mariners, and Owners of Ships undertook the safeguard of  
the Seas for the Subsidies of Tunnage and Poundage, &c. and that Merchants  
should name two persons, the one for the South part, the other for the North  
part, who by Commission should have the like power as other Admirals have  
had touching the same.

#### *Addition of some Records of Parliament.*

11 H. 4. nu. 24.  
Rot. Parl. 17 R. 2.  
48. 4 H. 4. nu. 17.  
11 H. 4. nu. 61.

All Statutes made concerning the Court of the Admiral shall be observed.

Sundry Towns of the West part prayed remedy against the Officers of the  
Admiralty for holding plea of matters determinable by the Common Law, the  
which they pray may be revoked: the Kings answer was, The Chancellor by the  
advice of the Justices upon hearing of the matter shall remit the matter to the Com-  
mon Law, and grant a prohibition.

7 R. 2. nu. 14

The Earl of Northumberland Admiral of the North, and the Earl of De-  
von' Admiral of the West, to receive the Subsidy of Tunnage and Poundage,  
and to keep the Seas.

#### *Addition of Books.*

1 part Instit.  
S. 459. & 677.  
11 H. 4. fol. 11.

See the First part of the Institutes, Sect. 459. & Sect. 677. where Littleton  
speaketh of a man out of the Realm, or beyond Sea, and add thereunto the no-  
table case in Mich. 11 H. 4. fol. 11. pl. 85. Sovingles case, the Defendant in an ap-  
peal of death being outlawed, brought his Writ of Error, and assigned for error,  
that at the time of the Outlawry, and before, he was in the Kings service upon  
the Sea in the company of the Lord Berkley then Admiral, and had a Writ unto  
him to certifie.

Lord Berkley  
Admiral.

6 E. 2. Tit. Protection 46. 7 R. 2. Tit. Trespass Satham. 10 H. 7. fol. 7. a. Vide  
18 H. 6. nu. 52. where the owner of a Ship shall answer for hurt done by his Ship,  
though he be not party thereunto.

Vide Lacies case, Cr. 25 El. 1. 2. f. 93. Vid. 1. 5. f. 106, 107. & 108. Sir Henry  
Constables case. Lib. 6. f. 47. Dowdales case. Brook tit. error 177.

See certain Statutes, viz. 27 E. 3. c. 13. Stat. Staple. 31 H. 6. c. 4. 2 R. 3. c. 6. 28 H. 8.  
cap. 16.

¶ The name.

It appeareth by the former Records, that the Admiralty is sometime called  
Admiralitas, sometime Admirallatus, and sometime by other names, as Admi-  
rallus, Capitaneus or Custos maris, or Marina, or Maritania, or Flotte navium, that

is, of the Navy floating on the Sea. *Ley marine, Ley del mariners.*

The Officer is called Admiral indifferently both in English and in French. We name him in Latin Admirallus, and the Court Curia Admiralitatis, derived of Amir, id est, Præfectus, & ἄνδρς *i. Marinus, Præfectus marinus, Admiralus, Admirallus. Admiralli curia res maritimas tractat: In hac numerantur Admirallus* *Camden,*  
Angliæ, locum tenens & iudex, scribæ duo, serviens Curie Viceadmiralli Angliæ.

Hæda or Hitha, *i. Portus a Haven, as Queen-hithe, Lamb-hithe, &c. Hafne Courts, now Haven or Port Courts, Hable, i. Portus.*

To conclude, the King of Englands Navy doth excel the Shipping of all other forain Kings and Princes: for if you respect beautiful stateliness, or stately beauty, they are so many large and spacious Kingly and Princely Palaces. If you regard strength and defence, they are so many moving impregnable Castles, and Barbicans, and were termed of old the walls of the Realm. When our English Navy is among the Ships of other Nations, it is like Lions inter pecora campi, and like a Falcon inter phasianos, perdices, & alia volatilia timida coeli.

Besides, no part of the world have such timber for building and repairing of Ships, as our King hath.

## CAP. XXIII.

*The Court of the Commission under the Great Seal  
by force of the Statute of 28 H. 8. cap. 15.*

28 H. 8. cap. 15.

**T**his Court must be holden Coram Admirallo Angliæ, seu ejus locum tenente, *The Commissioners*  
and 3 or 4 such other substantial persons, as shall be named by the Lord Chancellor for the time being.

Their jurisdiction is to hear and determine all Treasons, Felonies, Robberies, Murders, and Confederacies committed or done upon the Sea, &c. *The Jurisdiction*

These offences shall be heard and determined according to the course of the Common Law, and therefore some of the Judges of the Realm are ever in this Commission. *To be heard and determined by the Common Law.*

Concerning the mischief that was before the making of this Statute, and how the said Act hath been formerly expounded, you may read plentiful matter in the Third part of the Institutes, Cap. Piracy. *See the 3. part of the Instit. Cap. Piracy, pag. 111, 112. &c.*

The process and proceedings herein are in the name of the King: See before Cap. Chivalry, p. 124. that the Statute of 35 H. 8. c. 2. nor that of 5 E. 6. cap. 11. taketh not away this Act of 28 H. 8. concerning treasons; Note, that in all the Commissions granted for the execution of this Act of 28 H. 8. since the said Acts of 35 H. 8. 5 E. 6. power and authority is given to hear and determine all Treasons, &c. done upon the Sea.



## CAP. XXIV.

*Of Port-motes, alias Port-courts, alias Port-mote Courts.*

**A** Port-mote is a Court kept in Haven Towns, or Ports, and thereof taketh his name Curia Portus, &c.

\* See in the Chap. of the Courts of the Forest.

a Hereof cometh in London Queen-hithe, and in Lambeth Lābhithe, &c.

Portus est locus in quo exportantur & importantur merces, à portando: And they are Portæ Regni the \* gates of the Realm. a Hitha & Heda often in Domesday is taken for a Haven or Port, anciently written Hafne and now Haven, by changing the f into v, as is usual.

Every Haven is within the body of the County, &c. whereof see before plentiful matter in the Chapter of the Court of the Admiralty proceeding according to the Civil Law. See 43 Eliz. cap. 15.

## CAP. XXV.

*The Power and Authority of Commissioners and others for the maintaining and erecting of Beacons, signs of the Sea, or Light-houses, and Sea-marks, and concerning Watches.*

See the 3 part of the Inst. Cap. buildings, p. 204.

*Beacon.*

**B**eacon, this word is derived of the Saxon word Beacon, i. Speculum, unde specularantur adventus hostium, and is often called Signum speculatum, and Bechan in the Saxon language is signum dare, and we use the word to beckon to at this day.

Before the Reign of E. 3. there were but stacks of wood set upon high places, which were fired when the coming of enemies were descried, but in his Reign pitch holes, as now they be, were in stead of those stacks of wood set up, and this properly is a Beacon.

*Light-houses.*

\* ἀπὸ τῆς Φαίης,

id est, lucidum.

*Sea-marks.*

Light-houses, Ignes speculatorii, seu monitorii, seu lumen maritimum, seu \* pharus, unde versus,

Lumina noctivagæ tollit Pharos æmula Lunæ.

These Light-houses are properly to direct Seafaring men in the night when they cannot see marks, and these are also Signa speculatoria.

Sea-marks, as Steeples, Churches, Castles, Trees, and such like for direction of Seafaring men in the day time, and these are called Signa marina, or speculatoria, or signa nautis, whereof Virgil 5. Æneids.

Hic viridem Æneas frondenti ex ilice metam

Constituit \* signum nautis pater, unde reverti

Sciverit, & longos ubi circumflectere cursus, &c.

\* Id est insignium.

So as you may divide Specula or signa speculatoria, or signa nautis into three branches, viz. into Beacons, Light-houses, and Sea-marks.

At the Common Law none but the King only could erect any of these three, which ever was done by the Kings Commission under the Great Seal, as taking some few examples for many.

De

De signis super montes per ignem faciend'.

De signis super montes faciend'.

Rex assignavit a Henricum Epū Norwic', & b Willielmum Comitem Suff. & alios, &c. (inter alia) ad signa speculatoria super montes in com. Norff. ponend'. Et similes Commissiones in aliis Comitatus.

Vide Rot. Claus. 1 R.2.m.41. in Dorf. pro vigiliis & ignibus speculatoriis, & monitoriis.

He that is desirous to see more of Beacons, &c. and watching of the same, let him read the c Act of 5 H.4. which is an Act of Parliament, and Dorf. Pat. Anno 28 H.6. parte 2. m. 21. in com. Kanc' & memb. 13. pro com. Norff. pro signis, Anglice Beacons, & vigiliis. Et Dorf. Pat. Anno 1 E.4. parte 3. &c.

But of latter times by the Letters Patentes granted to the Lord Admiral he hath power to erect Beacons, Sea-marks and Signs for the Sea, &c.

By the Act of 8 Eliz. it is provided and enacted, That the Master, Wardens and Assistants of the Trinity house of *Debsford strand* ( a company of the chiefeft and most expert Masters and Governors of Ships ) shall and may lawfully from time to time at their will and pleasure, and at their costs, make, erect, and set up such and so many Beacons, marks and signs for the Sea in the Sea-shoars, and upland near the Sea coasts, or forlands of the Sea only for Sea-marks, as to them shall seem most meet, whereby the dangers may be avoided, and Ships the better come to their Ports. And all such Beacons, marks and signs so by them to be erected, shall be continued, renewed and maintained from time to time at the costs and charges of the said Master, Wardens and Assistants. An excellent Law, that this power and authority was given to them which had greatest skill, seeing they were works for the safety of the Realm, and safeguard of the lives of Sea-faring men, and that these works should be erected, and made, and continued by them at their own costs and charges, because they knew to go the nearest way.

Beconagium significeth money due or payable for the maintenance of Beacons, or the watching of the same. What punishment they incur which take down, sell, or otherwise cut down any Sea-marks, see the said Act of 8 El. ubi supra, where in it is to be observed, that if the person offending be not able to pay the penalty therein inflicted, he shall be deemed convict of outlawry, ipso facto, to all constructions and purposes: the like whereof we have not observed in any other statute. Wardwite, alias Warwite, or Ward penny, to be free from contribution of money to Watches and Wards.

We have out of an ancient Manuscript transcribed this ordination that followeth, which in the County of Norff. hath been observed, and it is very probable that the like hath been done by like Authority in other maritime Counties.

Ordinatio pro Vigill' observand' in Com' prædict' a Lynne usque Yermouth.

Norff.

Hæc igitur autoritate mandati nos Robert de monte alto & Thomas de Bardolfe mandamus Vic' Norff. quod venire faciat coram nobis apud Norwic' die Mercurii in fest' decollationis Sancti Johannis Baptist. prox' futur' omnes milites, omnes capit' Constabul. hundred, & Constabul. vill' & duos homines de discretior' cujuslibet villæ ubi portus vel applicat' Navium in balliva sua tam infra libertat' quam extra in com. prædict. ad consulend', formand', auxiliand' qualiter & quomodo dict' custod' securius pro salvatione partium illarum fieri possit, & ad faciend' quod ex parte dom' regis super præmissis injungitur. Ad quem diem nos dict' Robert & Thomas personaliter accessimus ibidem, ac milit', capit' Constabul' hundred, Constabul' vill' cum omnibus hominibus vill' ubi applicat' Navium exist' de Portu Lynne & de Portu Yarmouth coram nobis ibidem compar', & assuerunt, quod valde necesse esset pro salvat' totius patriæ quod vigill' fiant

X in

Rot. Scotiæ.

10 E.3.

Rot. Claus. Vasc.

10 E.3.

Rot. Franc.

47 E.3.m.201

a Henricum Spenser, He of a Soldier

became a Bishop.

b William. Ufford

comes Suff.

c Rot Par 5 H 4.

nu.24. not in print

worthy to be read.

8 Eliz cap. 13.

Pasch. 1 Jac. it

was resolved by

the two Chief Ju-

stices, Arturney

and Solicitor, that

this Act extended

as well to Ligh-

houses in the night

as to Beacons, &c.

by the day.

Convict of out-  
lawry.

Robertus de Monte  
alto and Tho. de  
Bardolfe sat in Par-  
liament

14 E.2. as Barons  
of the Realm, as  
appeareth in the  
Parliament Rolls.



\* 4 H. 4. cap. 3.  
Watches to be  
made upon the Sea  
coast by the num-  
ber of the people,  
in the places, and  
in manner and  
form as they were  
wont to be.  
Freebrigge.  
Clackclose.

in locis periculosis sicut \* antiquo more fieri solebant juxta mare. Et quod omnes homines corpor. valid. de Com. Norf. contribuend' ad ill. faciend. per quod ordinat. & consens. eorum concordat' est quod duæ vigill. per sex homines de corpore potenti tam per dies quam per noctes fieri in hundred' de Freebrigge, viz. apud Wolverton, & apud Clencherne, eo quod dict' hundred' jung. se mari a Wisbiche usque Dersingham per 14. leucas. Et quod quilibet vigilans capiet per diem & per noctem pro vadiis suis 3 d. Et quod hundred' de Clackclose adjung' eidem hundred' de Freebrigge ad contribuend' ad vigill. illa faciend', viz. pro qualibet septiman' 4 s. 6 d. & idem hundred. de Freebrigge 6 s. pro septiman', Et sciend' est 77 vill. continentur in dict. hundredo quæ assignantur ad dict. vigill. faciend'.

Fiat etiam una vigill. apud Southblyne in Clinchern, &c.

Smythdon.

Southgrenhoe.  
Laundiche.

Item quod una vigill. fiet in hundred. de Smythdon apud Thornham per sex homines, eo quod dictum hundred. jungit se mari de Dersingham usq; Deepedal fenn per 12 leucas. Et quod Hundred. de Southgrenhoe & Landiche adjung. eidem hundred' de Smythdon ad contribuend' ad vigill. ill. faciend', viz. hundred' de Southgrenhoe 3 s. 6 d. per septiman. & hundred. de Landiche 4 s. per septiman', & hundred. de Smythden 3 s. & continent. in dict. hundred. 79 vill. ad vigill. illa faciend.

Gallowe.

Brothercrosse.

Et fiat una vigill' in hundred. de Gallowe apud Burnham per 4 homines, eo quod dict. hundred. jungit se mari de Deepedale usque Holkham per 3 leucas. Et hundred. de Brothercrosse adjungit. eidem hund. ad contribuend. ad vigill. ill. faciend', viz. hundred. de Brothercrosse 3 s. per septim. & idem hundred. de Gallowe 4 s. per septim'. Et sciend. est 45 vill. sunt in dict. hundred. ad vigill. illa faciend.

Northgrenhoe.  
Weyland.  
Giltcrosse.  
Grimshoe.  
Ersham.

Item fiet un. vigil. in hundred. de Northgrenhoe apud Holkham per 6. homines, eo quod dict. hundred. jungit se mari, a Holkham usque Marston per 6 leucas. Et hundred. de Weyland, Giltcrosse, Grimshoe, & Ersham adjung. eidem hundred. ad contribuend. ad vigill. illa faciend', viz. Weyland 2 s. per septim', Grimshoe 2 s. per septim', Giltcrosse 2 s. per septim', & Ersham 2 s. per septim', & idem hundred' de Northgrenhoe 2 s. per septim'. Et sciend' est quod 76 vill. sunt in dict. hundred. ad vigill. ill. faciend.

Holt.

Eynsford.  
Hempstead.

Item fiet unum vigill. in hundred. de Holt apud Wabornn per sex homines, eo quod dict. hundred. jungit se mari a Marston usque Sheringham per 7 leucas. Et hundred. de Eynsford & Hempstead adjung. eidem hundred' de Holt ad contribuend. ad vigill. faciend', viz. Eynsford 4 s. per septim', Hempstead 3 s. 6 d. per septim. & idem Hundred. de Holt 3 s. per sept. & sciend' est quod 70 vill. sunt in dict. hundred. ad vigill. ill. faciend.

Northerpingham.

Southerpingham.  
Mitford.

Item fiet unum vigil. in hundred. de Northerpingham in duobus locis, viz. apud Runton & Trimmingham per 5 homines, eo quod dict. hundred. jung. se mari a Sheringham usque Munshye becke per decem leucas, & hundred. de Southerpingham & Mitford cum vill. infra libert. adjung. eidem hundred. ad vigill. illa faciend', viz. Southerpingham 6 s. 8 d. per sept. Mitford 3 s. 6 d. per sept. & Northerpingham 12 s. 6 d. per sept'. Et sciend' est quod 77 vill. sunt in hundred. præd. ad vigill. ill. faciend.

Tunstead.  
Humbleyard.  
Fowrehoc.

Item fiet unum vigill. in hundred. de Tunsted apud Bastwick per sex homines, eo quod dict. hundred. jungit se mari a Munshye usque Walcote

per







## CAP. XXVI.

*De Conservatore seu custode Treugarum, i. Induciarum & salvorum Regis Conductuum,*  
 And incidently of the office, authority, and privilege of Ambassadors; And of Leagues, Treaties, and Truces.

2 H.5.ca.6. Stat.1.

20 H.6.cap.17.

19 E.4.6.b.

18 H.6.cap.4.

20 H.6.cap.1.

Vide supra. p.132.

\* Regula.

19 E.4. ubi supra.

See the third part  
of the Instit. cap.  
Treason.

Verb. League.

2 H.5. cap.6.

Hil. 14 Eliz.

Hil. 13 Eliz.

Hil.12 Jac.

Carvel, or Cara-  
vel, is a swift Bark.

**B**y the Statute of 2 H.5. robbery, spoiling, breaking of Truces, and safe Conducts by any of the Kings liege people and subjects within England, Ireland, and Wales, or upon the maine Sea, was adjudged and determined to be High Treason: but this Branch concerning High Treason is repealed by the Statute of 20 H.6. But by the said Act of 2 H.5. for the better observation of truces and safe conducts, Conservator induciarum & salvorum regis conductuum was raised, and appointed in every Port of the Sea by Letters Patents. His office was to enquire of all offences done against the Kings truces and safe conducts upon the main Sea (out of the Counties, and out of the Liberties of the Cinque-ports) as Admirals, of custom, were wont.

It concerneth the Jurisdiction of divers Courts, and especially of the said Court before mentioned upon the said statute of 28 H.8. and of the Court of the Admiralty, to know the rights of Leagues and Ambassadors, as far as the Laws of England extend unto, for of them we will only treat.

All Leagues or safe conducts are, or ought to be of record, that is, they ought to be inrolled in the Chancery to the end the Subject may know, who be in amity with the King, and who be not: who be enemies, and can have no action here: and who in League, and may have Actions personal here. \* In all treaties, the power of the one party and the other ought to be equal.

A League may be broken by levying of War, or by Ambassador or Herald. Bryan held opinion in 19 E.4. ubi supra, that if all the subjects of England would make war with a King in League with the King of England without the assent of the King of England, that such a War was no breach of the League. See the statute of 2 H.5.cap.6. in the Preamble.

In the Duke of Norf. case Hil. 14 Eliz. the question was, whether the Lord Herise and other subjects of the King of Scots, that without his assent had wasted and burnt divers Towns in England, and proclaimed enemies, were enemies in Law within the statute of 25 E.3. the League being between the King and the Scot: and resolved that they were enemies.

And in the Bishop of Ross case, Ann. 13 Eliz. the question being, An legatus, qui rebellionem contra principem ad quem legatus concitat, legati privilegiis gaudeat, & non ut hostis poenis subiaceat. And it was resolved that he had lost the privilege of an Ambassador, and was subject to punishment.

Samuel Palache affirming himself to be the Subject and Ambassador of Mula Sedan King of Morocco to the States of the United Provinces, to treat and negotiate with them of divers matters between them; and they of the United Provinces having accepted him for an Agent or Legat. And the last of June 1611. there being enmity between the King of Morocco and the King of Spain, the King of Morocco made a Commission to the said Samuel to take Spaniards and their goods. The 25 of October 1613. the King of England gave him Letters of safe conduct as a publick Minister sent to the States of the United Provinces. 3 Martii 1613. the States licensed him to levy men to furnish his ships, &c. In June 1614. he took a Carvell of the Spaniards at the Canaries

navies



naries laden with Sugar, and another ship there also laden with Hides, of the goods of Spaniards; and after, with distress of wind, he with the said Prizes was driven to Plimouth, there being at that time League both between England and Spain, and between England and the United Provinces, and wars between Spain and the United Provinces. And against this Samuel the Spanish Ambassadoz here in England complained at the Council Table, and charged him with Piracy. The said Samuel and his company being arrested, and the goods seized, the Spanish Ambassadoz prayed that he might proceed against him as a Pirate upon the said Statute of 28 H.8.c.15. The Lords of the Council referred the consideration of this request to the Chief Justice of England, being present at the Table, and to the Master of the Rolls, and Sir Daniel Don Judge of the Admiralty, to consider of the case and to direct a course of justice therein indifferently. And the said referees heard the Council learned both in the Common and Civil Laws, on both sides on two several days in this Term: and after conference between themselves, and with others, these points were resolved. First, That at this day there could be no Ambassadoz without Letters of credence of his \* Sovereign, to another that had Sovereign Authority. Legatus per literas de sua legatione fidem facere debet, si exigantur, & commonitorium, s. Instructiones privatæ for the Ambassadoz himself for his direction.

Secondly, That of ancient time Ambassadors were called Oratores.

Jamq; Oratores aderant ex urbe Latina

Velati ramis olei —

And afterwards they were called Legati à legando, Nuntii à nuntiando, and afterwards Ambassadors or Embassadors and sometimes Agents: for Omnis legatus est agens, but Omnis agens is not legatus: For if he be sent from a King or absolute Potentate or State to a King or absolute Potentate or State to treat between them, although he in his Letters of Credence be termed an Agent or Nuntius, yet he is an Ambassadoz or Legate.

Thirdly, It was resolved that Ambassadors ought to be kept from all injuries and wrongs, and by the Law of all Countries and of all Nations they ought to be safe and sure in every place, in so much that it is not lawful to hurt the Ambassadors of our enemies: and herewith agreeth the Civil Law. And if a banished man be sent as Ambassadoz to the place from whence he is banished, he may not be detained or offended there, and this also agreeth with the Civil Law.

The case (which we have seen reported) in the Reign of H.8. was this: There being amity between King H.8. and the French King, and enmity between H.8. and the Pope, \* R. Pole a Rebel and Traitor to the King of England flyeth to Rome, whom the Pope being in amity with, the French King sendeth as Ambassadoz to him: the King of England demandeth his rebel of the French King, notwithstanding he was sent as Ambassadoz, Sed non prævaluit. And it is truly said, whosoever said it, Quia veritas à quocunque dicitur à Deo est, Fuit semper etiam apud Gentiles (qui nullam tenebant veræ fidei rationem) inviolabile nomen Nuncii & Legati, etiam si ab hostibus mitterentur semper salvi, & hodie apud Saracenos & Turcos, à quibuscunque tutæ destinantur legationes & literæ, etiam si illis ad quos deferantur molestæ sint & injuriosæ. But if a foreign Ambassadoz being Prorex committeth here any crime, which is contra jus gentium, as Treason, Felony, Adultery, or any other crime which is against the Law of Nations, he loseth the privilege and dignity of an Ambassadoz, as unworthy of so high a place, and may be punished here as any other private Alien, and not to be remanded to his Sovereign but of curiæ. And so of contracts that be good jure gentium, he must answer here. But if any thing be malum prohibitum by any Act of Parliament, private Law or Custom of this Realm, which is not malum in se jure gentium, nor contra jus gentium, an Ambassadoz refusing here shall not be bound by any of them: but otherwise it is of the Subjects of either Kingdom, &c.

Pasch. 36 Eliz. Henry de Vale and other Frenchmen imported divers manufactures, as Cloth of Wiltue, Cawles, Points, &c. Whereupon Tomlinson and other

\* Nulli nisi absoluti principes & qui majestatis juræ habent, Legatos constituere possunt. Virgil.

Item 11 Æneid.

Legati responsa ferant ---

Idem 12 Æneid.

Nuntius hæc idmon Phrygiæ mea dicta tyranno Haud placitura refer---

L. si. F. de Lega. In aut' de sanctiss. 1. Rerum Col 9.

\* See the third part of the Institutes, cap. High Treason, verb. Overt fact. pag 14. Tempore H. 5.

Pasch. 36. In Scacc.



19 H.7. cap.21.

other good Merchants of Lond' exhibited divers informations upon the Statute of 19 H.7. which prohibit the same; of whom the Frenchmen complained at the Councel Table, and it was resolved by the Lord Treasurer Burghleigh and the whole Councel, that it was no breach of the League betwixen this Kingdom and France, for that in the Articles of the League the Laws of either Kingdom be excepted: and therefore if Tomlinson the Subject being a French Merchant should trade into France, he must observe the Laws and customs of France.

2 R.3. fol.2.

Fourthly, It was resolved, that admit the said Palache was no Ambassadors, notwithstanding because there was enmity betwixen the King of Spain and the King of Morocco he could not be indicted as a Pirat before Commissioners upon the said Statute of 28 H.8. Because that one enemy cannot be a felon for taking of the goods of another enemy. And the words of the said Act be, [That the Commissioners by force of the said Act shall proceed, as if the offence had been committed upon the land, and according to the course of the Common Law.]

Trin. 2 Jac. corā Rege.

Sæ 2 R.3. by all the Justices, that this is no felony, which case is in his parts remembred hereafter. For it is very observable what the Law of England is in that case. It was holden by some of the Civilians, that albeit the Spaniard could not proceed against him criminaliter, upon the said Act of 28 H.8. yet the goods being in solo amici, that is, in the soil of the King of England, who was in league with both, that the Spaniard might proceed against Palache, civiliter in the Admiral Court: but that was resolved to the contrary by Popham Chief Justice, and the whole Court of the Kings Bench Trin. 2 Jac. to be against the Law of England in that case: where the case was this, That where the King of England was in league with the King of Spain, and with those of Holland, &c. and there was enmity between the King of Spain and those of Holland, &c. and one of Holland upon the high Sea, in aperto prælio took the goods of a subject of Spain, and brought them into England, infra corpus comitatus, and for that the goods were in solo amici, the Spaniard whose goods were taken libelled for them civiliter in the Admiral Court. It was resolved by the whole Court of the Kings Bench upon conference and deliberation, that the Spaniard had lost the property of the goods for ever, and had no remedy for them in England. And relied principally upon the book in 2 R.3. ubi supra, being of so great authority: for by that book, he that will sue to have restitution of goods robbed at Sea, ought by Law to prove two things. First, That the Sovereign of the plaintiff was at the time of the taking in amity with the King of England. Secondly, That he that took the goods was at the time of the taking in amity with the Sovereign of him whose goods were taken: for if he which took them was in enmity with the Sovereign of him whose goods were taken, then it was no depredation or robbery, but a lawful taking, as every enemy might take of another: all which appeareth in the said book. Sæ the Statutes of 27 E.3. and 31 H.6. well expounded in 2 R.3. ubi supra. Vide 7 E.4.14. 13 E.4.9. 22 E.3. fol.23. concerning this matter. And for that there was enmity betwixen the King of Spain and those of Holland, therefore it could not be depredation, but a lawful taking. It was also resolved by the Court of the Kings Bench, that the goods so taken being within this Realm, viz. infra corpus comitatus, in solo amici, that if the Spaniard sue for them civiliter in the Court of the Admiralty, that a Prohibition should be granted, and that it should be determined by the Laws and Statutes of England, and not by the Civil Law.

27 E.3 cap.13. & cap.17.  
31 H.6. cap. 4.  
7 E.4. fol.14.  
13 E.4.9  
22 E.3.16,17.  
Regist. 129.  
F.N.B.114.  
Prohibition  
Nota.

With this resolution of the Kings Bench Doctor Taylor an Englishman, and Solicitor for the King of Spain, was at the first much offended, but when he had taken advice and understood the reason of the resolution, he was well satisfied.

Lib.5. fol. 16.

If a shipwreck be on the Sea, yet if any of the goods come to land within this Realm, the Admiral shall not have jurisdiction, but it belongeth to the Common Law.

Sæ the third part of the Institutes, cap. Treason: what offence it hath been, and what it is at this day to kill a foreign Ambassador: and see there 3 R. 2.

John



John Imperials case, Ambassadors of Genoa. It appeareth in the Holy History, viz. in the first book of the Chronicles, that injury and disgraces offered to King Davids Ambassadors which he sent to Hanon King of the Moabites, Ad consolationem ei supra mortem patris sui, grandem etiam contumeliam sustinuerunt, &c. was a just cause of war by David against the Moabites, and was severely re- venged, as by the Holy history it appeareth.

There be four kinds of leagues. 1. *Fœdus pacis*, and that a Christian Prince may have with an Infidel. Si fieri possit, quod ex vobis est, cum omnibus hominibus pacem habeatis. 2. *Fœdus congratulationis* sive consolationis. And this may a Christian Prince make with an Infidel as David did with Hanon: ubi supra. 3. *Fœdus commutationis mercium* sive commercii. And this also may be made with an Infidel, as King Solomon did with Hiram an Infidel, and Joshua did with the Gibeonites. 4. *Fœdus mutui auxilii*, and this cannot be done with an Infidel or an Idolater. Jehosaphat King of Juda, made *fœdus mutui auxilii* with Achab King of Israel, an Idolater; For Achab said to Jehosaphat, Veni mecum in Ramoth Gilead. Cui ille respondet, Ut ego & tu, & sicut populus tuus, sic & populus meus tecum erimus in bello: in which war Achab was slain, and Jehosaphat was in extreame danger. And after, as the Text saith, Reversus est autem Jehosaphat Rex Judæ in domum suam pacifice in Jerusalem, cui occurrit \* Jehu filius Hanani, & ait ad illum, Impio præbes auxilium, & hiis qui oderunt Dominum amicitia jungeris, & idcirco iram quidem Domini mereberis. And the Laws of England concerning these four leagues are as you perceive grounded upon the Law of God.

But here ariseth a question, that seeing *fœdus pacis*, or *fœdus commercii* may be stricken between a Christian Prince and an Infidel Pagan and Idolater, and those leagues are to be established by oath, whether the Infidel or Pagan Prince may swear in that case by false gods, seeing he thereby offendeth the true God by giving divine worship to false gods. This very doubt was moved by Publicola to S. Augustine, who resolveth the same thus: he that taketh the credit of him that sweareth by false gods not to any evil but good, he doth not joyne himself to that sin of swearing by Devils, but is partaker with those lawful leagues wherein the other keepeth his faith and oath. But if a Christian should any way induce another to swear by them, herein he should grievously sin. And seeing the leagues in these cases are warranted by the word of God, & per praxin sanctorum in sacra scriptura, all incidents thereunto are permitted: for per praxin sanctorum the practise of holy men in Scripture, may oftentimes be collected how the Commandments in it are to be understood, and praxis sanctorum appeareth before.

And it is to be observed that of ancient time, and until latter days no Ambassador came into this Realm before he had a safe conduct. For as no King, &c. can come into this Realm without a license or safe conduct, so no Prorex, &c. which repellenteth a Kings person can do it. For safe conducts see the Writs in the Register de salvo conductu, and the Statutes of 15 H. 6. 18 H. 6. and 20 H. 6. with all incidents thereunto. And King H. 7. that wise and politick King would not in all his time suffer Lieger Ambassadors of any forain King or Prince within his Realm, nor he any with them, but upon occasion used Ambassadors.

\* Every Ambassador ought to have four qualities, expressed in this Verse.

Nuncie, sis verax, tacitus, celer, atque fidelis.

And of him another saith,

Fœderis orator, pacis via, terminus iræ.

Semen amicitiae, belli fuga, litibus hostis.

William de la Poole Duke of Suff. by the Commons was charged (amongst other things) with this, that he procured the King, in his presence only without any other of the Council, to have secret conference with the French Ambassadors, &c. for the which (amongst other things) he was banished, &c. as by the Record appeareth.

1 Chro. 19.2. &c.

Rom. 12.18. Gen. 14.13. &c. Abrah. cum Rege Sodem.

Joshua cap. 9. 2 Kings 5.1. &c. & 34.35.

2 Chron. 18.

Jerem. 15.4.

See 1 Mac. 8.19.

20. & cap. 10.

2 Chron. 19.2.

& cap. 20.35. &c.

\* The Prophet of God.

Aug. Epist. 154. ad Publicolam.

August. lib. de mendacio c. 2. 15. Praxis sanctorum interpret præceptorum.

Rot. Parl. 9 H. 6. nu. 12. and long after. See lib. 7. Calvins case, De rege Manne. Regist. fol. 25, 26. 15 H. 6. cap. 3. 18 H. 6. cap. 8. 20 H. 6. cap. 1. 8 H. 7. f. 10. Legate of the Pope sworn &c.

\* Four qualities ought to be in an Ambassador.

Rot. Pl. 28 H. 6. nu. 28.



1 Decemb. 21 H.8.

See these Articles  
before in hæc ver-  
ba, Cap. Chancery,  
Artic 2, 3, 9, 10, 12

Cardinal Wolsey was charged with these notable high and grievous offences ( amongst others ) viz. that he being the Kings Ambassadoz in France made a treaty with the French King for the Pope, the King not knowing any part thereof nor named in the same, and binding the French King to abide his order and award, if any controversie or doubt should arise between the said Pope, and the said French King.

Also that the said Lord Cardinal being the Kings Ambassadoz in France sent a Commission to Sir Gregory de Cassalis under the Great Seal in the Kings name to conclude a treaty of amity with the Duke of Ferrare without the Kings commandment or warrant, nor the King advertised nor made privy to the same.

Also the said Lord Cardinal taking upon him otherwise then a true Privy Counsellor ought to do, hath used to have all Ambassadors to come first to him alone, and to hear their charges and intents, &c.

Also the said Lord Cardinal used many years together not only to write to all the Kings Ambassadors in forain parts with other Princes in his own name all advertisements concerning the Kings affairs being in their charge, and in the same letters wrote many things of his own mind without the Kings pleasure known, concealing divers things which had been necessary for them to know, but also caused them to write their advertisements to him, and of the same letters he used to conceal, for the compassing of his purpose, many things both from the Kings Council and the King himself.

The difference between a League and a Truce is, that a Truce is a cessation from war for a certain time: a League is an absolute striking of peace.

a A Truce. Rot.  
Franc' 19 E. 3.  
m. 10. part 1.  
b See the truce at  
large, L. Par. fol. 5.

a Of a Truce we have read in anno 19 E. 3. to this effect. Rex post initas inducias cum Francorum Rege per mediationem b Romani Pontificis, copias suas bellicas demum reduxit, postea deprehendens præfat Regem Fran' hostilia contra ipsum moliri, & nuntios præfati Pontificis simulata pace dissidium fovere, præmissa omnia per Literas Patentes exponenda duxit, & bellum cum præfato Rege resumit.

c A League. Rot.  
Par. 4 H. 5. nu. 14.

c A League and alliance was made between King H. 5. his heirs and successors, and Sigismond King of the Romans his heirs and successors Kings of the Romans, and was confirmed by Act of Parliament. The instrument whereof is very long, but not so long as effectual and worthy of observation.

d 9 E. 4. 2. a.  
e 39 H. 6. 39.  
f Rot. Par. 35 E. 5.  
part. 2. m. 24.  
Clauſ. 10 H. 4. m.

d It is said in 9 E. 4. that a League made between two Kings ( without naming of successors, doth not extend to successors, although by our Law Rex noni intermoritur.

15. nuntius Papæ.  
Rot. Clauſ. 14 H. 3.  
m. 1. Rot. Clauſ.  
12 R. 2. m. Dorſ.  
g Rot. Pat. 17 R. 2.  
part. 1. m. 23.  
Rot. Franc. 12 H. 6.  
m. 2. Rot. Pat. 12 H.  
6. 12 part. m. 6.

e Justice Ashton is of opinion, that no Ambassadoz ought to be sent to the Pope, but there may be many presidents to the contrary, for besides his spiritual jurisdiction he is a Temporal Prince, whereof see a president among many others, f Rot. Pat. 35 E. 3. parte 2. m. 24. and likewise the Pope sent Ambassadors into England, who were sworn not to attempt any thing prejudicial to the King or Kingdom.

\* Robert Gilbert  
Doctor of Divinity  
John Langdon  
Doctor of Divinity  
died at this Council.  
cel. Ni hoc ius Ab-  
bas Glaston, Williel.  
Abbas beate Mariæ  
Eborum.

g And that we may give some taste of every kind: In times past the King of England sent Ambassadors to general Councils, as taking one example of that sort for many. Ad concilium Basiliens' sub Eugenio Papa, quorum destinati sunt per Regem Ambasiatores & Oratores Episcopi Robertus London', Philippus Exoniens', Johannes Rossens', Johannes Baiocens' & Bernardus Aquarens' Edwardus comes Moriton, Abbates Glaston' & beata Mariæ Eborum, Prior Norwici. Henricus Bromflet miles, ( Dominus Vesciæ ) Thomas Browne legum Doctor, Decanus Sarum, Johannes Colleville miles, & alii. Their authority was in these words. Dantes & damus eis & ipsorum majori parti potestatem & mandatum tam generale quam speciale nomine nostro & pro nobis in eodem concilio intercedendi, tractandi, communicandi, & concludendi tam de hiis quæ reformationem Ecclesiæ universalis in capite & in membris, quam in hiis quæ fidei orthodoxæ fulcimentum, regumque ac principum pacificationem concernere poterunt, nec non de & super pace perpetua, guerramve abstinentia inter nos & Carolum

The letters of the  
Pope whereby ge-  
neral Councils  
are called, you  
may read in Mat.  
Par. Anno Dom.  
1245. pag. 886.

Carolus adversarium nostrum de Francia, ac etiam tractandi, communicandi, & appunctuandi, consentiendi insuper, & si opus fuerit, dissentiendi hiis quæ juxta deliberationem dicti concilii inibi statui, & ordinari contigerit. Promittentes & promittimus bona fide nos ratum, gratum, & firmum perpetuo habiturum totum & quicquid per dictos Ambassiatores, Oratores, & Procuratores nostros, aut majorem partem eorundem actum, factum, seu gestum fuerit in præmissis, & in singulis præmissorum, & hoc idem cum de & super iis certiorati fuerimus quantum ad nos & Christianum principem attinet, executioni debitæ curabimus demandare. In cujus rei testimonium has literas nostras fieri fecimus patentes. Dat' sub magni sigilli nostri testimonio in Palatio nostro Westm' 10 die Julii.

We have exprested this Ambassage the more particularly, for that, to this Councel also I find that Henry Beauford (Son of John of Gaunt by Katherine Swinford) Bishop of Winchester and Cardinal of S. Euseby addrested himself and had license to transport and carry with him 20000 l. of Gold and Silver (mute but moving Ambassadors) notwithstanding the Statutes of 9 E.3. cap.1. and 5 R.2. cap.2. &c. For the form of a safe conduct (which is called de salvo conductu) see the Register. And for the effect and validity thereof, see the Statutes of 15 H.6. cap.3. 18 H.6. cap.4. 20 H.6. cap.1.

Rot. Pat. anno  
11 H.6. parte 1.  
m.10. & 12. &  
anno 12. parte 2.  
m.13.  
9 E.3. ca.1.  
5 R.2. ca.2.  
Safe conduct.  
Reg. fo. 25, 26.

Recordum & process' contra Petrum de Rival Thesaurarium & Camerarium totius Angliæ & Hiberniæ, & custod' omnium Forestarum & omnium Portuum maris, &c. de compoto regi reddito de officiis prædictis & de judicio contra ipsum redditum per defaltam, quia venire recusavit, nisi salvo regis conductu, quod rex denegavit quasi insolitum & indebitum.

Anno 18 H.3.

What reward Legats have had in former times you may read Rot. Liberat. 11 H.3. m.13. Rot. Claus. 11 H.3. m.11. in Dorf. Rot. Liberat. 3 E.1. m.9. Eodem Rot. 1 E.1. m.2. Rot. Alman. 11 E.3. per totum Rotulum.

See Beda in his History of England, Lib.1. cap.11. hereafter Cap. 75. Of Scotland, in fine, the danger of unwise and incertain Leagues.



## CAP. XXVII.

*The Court of the Justices of Assise, and Nisi Prius.*

Glanvil lib. 13.  
cap. 32, 33. &c.  
Bract. lib. 4. fo.  
164. b.  
Britton fo. 106. b.  
112. 118.  
Fleta li. 4. cap. 1.  
& 5. Mirror ca. 2.  
S. 15.

Stat. Walliæ in  
Ver. Mag. Cart.  
2 part fo. 12.  
26 Ass. P. 24.  
\* F. N. B. 177. Reg.  
See the 1 part of  
the Inst. Sect. 442.  
Mag. Cart. cap. 30.  
39 H. 6. 19. b.  
Mord.

When Justices of  
Assise by Patent  
first began.

† The Patent of  
the Justice of As-  
sise.

a Justice nostras ad  
Assisas.

Hereunto belong  
Commissions of  
Associat', Writs of  
admittance, and  
of si non omnes,  
&c. F. N. B. 177.  
Register: and a  
Writ to the She-  
riff to bring be-  
fore them omnia  
brevia Assis' Jurat'  
& Certificat', &c.  
b Jurat' when the  
recognitors are  
turned in juratam.

19 E. 2. Ass. 418.  
29 Ass. p. 8. &c.

c Certificat. hereof  
you may read in  
F. N. B. and the  
Register.

d Nota

e W. 2. ca. 25.  
f W. 2. cap. 30.

Vi. 4 E. 3. cap. 2.  
g Rot. Par. 21 E. 1.

Rot. 3. De Justici-  
ariis assignatis.

**F**or the Writ of Assise, whereof the Justices take their name; in all an-  
cient Authors, it is called Assisa novæ disseisinæ, or Petit brief de novel dissei-  
sin. Of which Writ Bracton saith: Recognitio Assisæ novæ disseisinæ multis  
vigiliis excogitata & inventa fuit recuperandæ possessionis gratia, ut per summariam  
cognitionem absque magna juris solennitate, quasi per compendium, negotium ter-  
minetur. And the Mirror saith, that for expedition of Justice, and ousting of de-  
lays, it was ordained by Ranulph de Glanvil; but I find the Writ more ancient,  
as it appeareth in 26 Ass. pl. 24.

At the Common Law Assises were not taken but either in \* Bench, or before  
Justices in Eyre, and this was a great delay to the Plaintiff, and a great mo-  
lestation and vexation of the recognitors of the Assise. For remedy whereof, it  
is enacted by the Statute of Magna Carta, Quod recognitiones de nova disseisina,  
& de morte antecessoris non capiantur nisi in suis propriis comitatibus, & hoc mo-  
do nos si extra regnum fuere Capitales Justiciarii nostri, mittent Justiciarios nostros  
per unumquemque comitatum semel in anno, qui, &c. capiant comitatibus illis  
Assisas prædictas. By force of this Act, these three conclusions are to be obser-  
ved. First, that no Assise can be returnable in the Kings Bench, or Com-  
mon Bench, unless the disseisin be done in the County where the Benches sit  
respectively, or if both Benches sit in one County, then the Plaintiff hath elec-  
tion to make it returnable in which Bench he will. Secondly, that the Justices  
of both Benches in that case have Jurisdiction originally and ordinary without  
any Patent. Thirdly, that upon the said Act of Magna Carta Letters Patents  
to Justices of Assise were framed for the taking of Assises in the proper Counties  
in these words.

† Rex, &c. dilectis & fidelibus suis R. M. uni Justic' suorum de Banco, & J. L:  
uni Justic' suorum ad placita coram nobis tenend' assign Salutem. Sciatis quod con-  
stituímus vos Justiciarios nostros una cum hiis quos vobis associaverimus, ad om-  
nes a Assisas, b Jurat', c certificat' coram quibuscunque Justic' tam per diversa brevía  
domini Johannis nuper regis Angliæ patris nostri, quam per diversa brevía nostra  
in Com' nostris Southt', Wiltes. Dorset. Somersset, Devon & Cornub. ac in civitate  
Exon arranian' capiend'. Et ideo vobis mandamus, quod ad certos dies & loca quos  
vos ad hoc provideritis, Assis', Jurat' & certificat' illas capiatis; d Facturi inde quod  
ad justitiam pertinet secundum legem, & consuetudinem regni nostri Angliæ. Salvis  
nobis amerciamentis inde proveniē. Mandavimus enim Vicecomitibus nostris com'  
& civitat' prædict', quod ad certos dies & loca quos eis scire faciatis Assis', Jurat' &  
certificat' illas una cum brevibus origin' & omnibus aliis ea tangen' coram vobis ve-  
nire fac'. In cujus rei testimonium, &c.

e If this Writ the seisin and possession was recovered, and became most fre-  
quent, quia non est aliud breve in Cancellaria, per quod quærentes habent tam festi-  
num remedium, quam per Assisam. f And after the Statute of W. 2. was made,  
and thereby it was provided, quod assignentur duo Justiciarii jurati, coram quibus,  
& non aliis, capiantur Assisæ, &c. ad plus ter per annum.

g Dominus rex, &c. præcipit, quod de cætero assignentur Octo Justiciarii cir-  
cumspecti & discreti ad Assisas, Jurat' & certificat' capiend' per totum regnum  
Angliæ, viz. and divideth the Realm into eight parts, and to every part assign-  
eth two Justices.



But divers Acts of Parliament have given unto Justices of Assise authority in many cases.

*b* Per lestatut' de finibus ca.3. Justiciarii ad Assisas capiendas assignati deliberent Gaolas in com' illis tam infra libertates quam extra de prisonariis quibuscunque.

*c* Appeals of murder, robbery and rape may be commenced before Justices of Assise.

*d* Power given to Justices of Assise to try the appeals of Approvers.

*e* Justiciarii ad Assisas capiend' assignati non compellant Juratores dicere præcise.

*f* Justices of Assise shall enquire for non-returning, and false returns of Sheriffs.

*g* Justices of Assise may hear and determine of Conspirators, false Informers, and wicked procurers of dozens, Enquests and Juries at the complaint of any without Writ, and without delay, and of confederacies and Champerties and maintainers, bearers, and alliances by bond, &c. *h* Of defaults of Sheriffs, Clerkeholders, Baylies, and other Officers.

*i* Justices of Assise may enquire of defaults, &c. of punishment of Victuallers, &c. which sell at unreasonable prices.

*k* They have power to hear and determine riding and going armed, &c. and to punish Justices of Peace, Sheriffs, Baylies, and others for not doing their office in that case.

*l* They may hear and determine Treason in counterfeiting of money, &c.

*m* They shall do execution of the Statute of 13 H.3. of riots done in their presence upon pain of an hundred pound. *n* And by the Statute of 2 H.5. Commissions shall be awarded to enquire of the default of Justices of Assise, and of Justices of Peace in that behalf.

*o* They shall enquire of, hear, and determine all offences contrary to the Statute of 23 H.6. concerning Sheriffs, Under-Sheriffs, and their Clerks, Coroners, Stewards of Franchises, Bailiffs, and keepers of prisons for extortion, and for letting to bail such as were notailable, or for denying of bail to them that ought to be bailed, &c.

*p* Justices of Assise shall take bail of him that is acquitted of murder within the year to answer to the appeal of the party, 5 Eliz. cap. 5. Of Informers. 5 Eliz. cap.4. Of Labourers.

*q* Justices of Assise, of Gaol-delivery, and of the Peace, shall enquire of the default of Coroners.

*r* Justices of Assise, &c. shall enquire of false making of Leather. *s* Of amending of High ways. *t* Of hunters in Parks. *u* Of unlawful taking of Fishes. *x* Of forgery of false deeds. *y* Against deceit in Linnen cloth. *z* Against perjury. *\** Of usury, and many other things.

*a* Justices of Assise twice in the year ought to proclaim the Statute of 32 H.8. and other Statutes against unlawful maintenance, champerty, imbracery, and unlawful retyners. *b* They ought to proclaim the Statute of unlawful games in their circuit. See the Custom of Normandy, cap.19.

*c* Now concerning Justices of Nisi prius, they were first instituted by the Statute of W.2. of issues joyned in the Common Bench, and Kings Bench: and their authority is annexed to the Justices of Assise and is by force of a judicial Writ, and therefore we have joyned them under one title. And this appeareth in the judicial Writ of Nisi prius, which is,

authority of Justices of Nisi prius, in libro meo, fo.54.b. the Pl. begun, Et auxint en Nisi prius grant devant Stonf.

*Rex Vicecomiti salutem. Præcipimus tibi quod venire fac' coram Justiciariis nostris apud Westm. in Octab. Sancti Michaelis, vel coram Justiciariis nostris ad Assisas in com' tuo per formam Statuti nostri inde provis' capiend' assignatis, si prius die lune prox' ante festum, &c. apud, &c. venerint 12. tam milites quam alios, &c.*

And by the said Act the Justices of Nisi prius have power to give Judgment in Assise of Darrein Presentment and Quare Impedit.

*b* 27 E.1. Stat. de Finibus cap.3.

To deliver Gaols.

*c* 22 E.4.19.

*d* Stat. de Appel-

latis. an. 28 E.1.

*e* W.2.cap.30.

*f* W.2.cap.39.

2 E.3.cap.5.

*g* Artic. sup. Car.

28 E.1. 4 E.3.

*h* 11.7 R.2.c.15.

Regist. 186.188.

4 E.3 ca.12. Of

Majors and Bay-

lifs, que ne s'irke

wines.

*i* 20 E.3.ca.6.

*j* 23 E.3.cap.6.

*k* 2 E.3 ca.3. de

Northampton.

1 R.2. ca.7. Of

unlawful mainte-

nance.

*l* 3 H.5.ca.7.

*m* 13 H.4. cap.7.

*n* 2 H.5.cap.8.

*o* 23 H.6. ca.10.

23 H.8.ca.9. for

flooting.

*p* 3 H.7.cap.1.

*q* 1 H.8.8. ca.7.

*r* 18 El.cap.9.

*s* 18 El.cap.10.

*t* 5 El.cap.3.

*u* 5 El.cap.5.

*x* 5 El.cap.

*y* 1 El.cap.14.

*z* 5 El.cap.9.

*\** 13 El.cap.8.

*a* 32 H.8.ca.

*b* 33 H.8.ca.9.

*c* W.2 c.30. See

the 2 part of the

Inst. the exposi-

tion of this Act.

Vid. Fleta l.4. c.5.

Vid. Hil. 32 E.3.

m.5. see the au-

thority of Justices of Nisi prius.

Reg. judic 48.75.

W.2.ca.30.

6 E.6. Dier 77.



7 R.2. ca.7.

By the Statute of 7 R.2. Nisi prius shall be granted as well in the Exchequer as elsewhere.

18 El.ca.12.

Of issues joyned in the Kings Bench, Common Bench, and Exchequer, the Chief Justices, or Chief Baron, or in their absences two other Justices or Barons of the said several Courts, as Justices of Nisi prius for the County of Midd within the Terme, or four days after shall severally try, &c. and that Commissions, and Writs of Nisi prius shall be awarded, &c. It is to be observed that there is but a transcript of the Record sent to the Justices of Nisi prius.

9 El.Dier 261.

27 E.1. de finibus.

F.N.B. 241. c.

Statut. de York.

12 E.2. ca.3. &amp; 4.

2 E.3. ca. 16. &amp;

4 E.3. cap. 2.

14 E.3. ca.16.

By the Statute of 27 E.1. de Finibus ca.4. It is provided, Quod inquisitiones & recognitiones capiantur tempore vacationis coram aliquo Justiciario de utroque Banco, coram quibus placitum deductum fuerit. See the Statutes of York, 2 E.3. cap.16. 4 E.3. ca.2. and the statute of 14 E.3. cap.16. which statute doth provide that Nisi prius may be taken in every plea real and personal before two, so that one be Justice of one of the Benches, or the Chief Baron or Serjeant sworn, without any regard where the plea depended, and this standeth yet at this day. Vid. 42 E.3. cap.11. 19 H.6. fol.47. 33 H.6. fol.14. 16 H.7. fol.14. 5 Mariae Dier fol.163.

Rot. Claus.

10 E.2. m.10.

Concordatum fuit per totum concilium regis, quod nullus Vicecomes aut Coronator fiat Justiciarius ad Assisas capiend', Gaolas deliberand', transgress' audiend' & terminand', seu ad aliquod aliud officium Justic' faciend', eo quod debent esse intendentes aliis Justiciariis. Which Act is declaratory of the Common Law, for that (as by the reason yielded in the Act it appeareth) these offices be incompatible, the one being attendant unto, and within the controlment of the other.

F.N.B. 240. c.

Stanf. 156.

Nisi prius in case

of Felony and

Treason. 4 E.3.

cap.11.

a 24 E.3. f.23.

Rot.Par. 37 E.3.

nu.18. F.N.B.

241.a.

b 10 E.4. fo.14.

22 E.4. 18. 3 Mar.

Dier 120, 121.

131.

c See the 2 part of

the Inst. upon this

Act of W.2. ca.12.

d 27 E.1. Stat. de

finibus. cap 4.

Regist. 186.

14 H.6. cap.1. Justices of Nisi prius have power in all cases of Felony and Treason to give judgment as well where the prisoner is acquitted, as where he is attainted, and to award execution.

a Where the King is a party, a Nisi prius may be granted, if the Kings Attornys assent unto it.

In Appeal of murder, robbery, and rape brought in the Kings Bench, if the parties be at issue a Nisi prius may be granted before Justices of Assise. 25 E.3. 30. 14 E.3. Nisi prius 16. 22 E.4. 19. 21 H.7. 36. 9 El. Dier 261. 42 E.3. c.11. 8 H.5. 6. b But it is to be observed, that if the Appellæ be acquitted before Justices of Nisi prius, they have power to acquit, &c. and give Judgment, as is aforesaid.

c They may also enquire and judge of the abettors and damages by the statute of W.2. cap.12. and not by the said Act of 14 H.6. And so it is if the Appeal be brought before the Justices of Assise, they have also power to enquire and judge, Ut supra.

d These Justices of Nisi prius were instituted for two causes, viz. 1. Propter intolerabilem jacturam Juratorum, & in exonerationem Juratorum. 2. Ad celerem justitiam in ea parte exhibendam.

W.2. cap.30.

Inquisitiones & Jurat in placito terræ capiend' quæ magnæ non sunt examinationis, capiantur in patria, &c.

Regist. 186.

And hereupon a Prohibition is grantable to Justices of Assise, Quod non caperent in patria inquisitiones quæ magna indigent examinatione.

14 E.3. ass.Br.

413. &amp; tit. Ass.

Finzh. 110.

By the original institution of Justices of Assises and of Nisi prius, the trial should be before two at the least, and it were much for the advancement of Justice and right to have the Law put in execution, for plus vident oculi, quam oculus, and specially in Pleas of the Crown concerning the life of man, in regard whereof they shall be worthy of greater allowance.

Dier Manuscript.

Hil. 11 Eliz.

26 Ass.p.3.

Before the Justices of Assise in pays a forain plea, viz. Willenage was pleaded, for trial whereof the Record was removed into the Common Bench, and there a Venire fac' was awarded, and retozne, servie, and a Habeas corpus with a Nisi prius was payed. And it was objected that the issue was not joyned in Wank, nor Judgment to be given there, and yet in the end the prayer was granted, as

in

in a \* Certificate, upon an Assise a Nisi prius shall be granted: *a* And so it is upon a sozain Voucher, Receipt shall be granted, and a trial by a Nisi prius had.

*b* The Justice of Nisi prius may grant a Tales de circumstantibus, either when but one or more appear of the principal pannel, or where eleven do appear: and all the Jury may be of the Tales de circumstantibus, as it was upon a Tales at the Common Law.

*c* Where the King is party, a Nisi prius is grantable for the King, but not for the party without assent of the Kings Attorny, and so are the books to be intended.

*d* In Attaint the Plaintiff craved a Nisi prius, and because one of the Petit Jury was prisoner in Newgate, and came in ward and pleaded, and was remanded, and if a Nisi prius should be granted he should lose his challenges, the Court denied to *e* grant any Nisi prius, otherwise a Nisi prius may be granted in an Attaint.

*f* In trespass between the Duke of Exeter and the Lord Cromwell, the Counsel of the Duke moved for a Nisi prius, and for that the Duke was a Prepotent Prince in that County, and the Venire fac<sup>o</sup> being returned, there was a great rout in the Hall, so as if a Nisi prius should be granted great mischief might ensue, therefore no Nisi prius was granted.

More you may read of the Writs of Assise and of Nisi prius in our books, that which hath been said concerning the jurisdiction may suffice. It is commonly called a Writ of Nisi prius, but the words of the Writ are Si prius &c. And albeit the authority of Justices of Assise (as it hath appeared) hath by Act of Parliament been exceedingly enlarged both in dignity and multitude of causes, yet they retain their first and original name, albeit Assises are in these days very rarely taken before them. See in the Chapter of Justices of Peace powers and authorities lately granted to Justices of Assise, and Justices of Nisi prius.

\* 7 H. 4. 45. 8 E. 4. 16. F. N. B. 183. h.  
*a* 18 E. 3. 1. 49 E. 3. 21. 3 H. 4. 18.  
*b* 35 H. 8. cap. 6.  
 23 El. Dier. 376.  
 4 & 5 Ph. & Mar. cap. 7. 14. El. c. 9.  
 18 El. c. 12. Vid. 8. Eliz. Dier. 145.  
*c* 25 E. 3. 39. 18 E. 3. 58. 14 E. 3. Nisi prius 16. 24 E. 3. 23. 21 H. 7. 34.  
 F. N. B. 140. Stanf. pl. cor. 156. a. b.  
*d* 44 E. 3. fol. 2.  
 44 Ass. p. 20.  
 8 H. 4. 23. 21 E. 3. 17. 6 Ass. p. 7.  
*e* 15 E. 3. Nisi prius. 22 simile.  
 21 E. 3. ibidem 21.  
*f* 32 H. 6. 9. 22 E. 3. 16. F. N. B. 241.  
 a. Dier 4 El. 215.



## C A P. XXVIII.

*Justices of Oier and Terminer.*

For general Com-  
missions, see  
42 Aff. pl. 5. 2 R. 2.  
Cor. 47. Pl. com.  
390. Countee de  
Ltic. case.

**T**HE authority of Justices of Oier and Terminer is by Commission. Of Commissions of Oier and Terminer there be two sorts, one general, so called because it is general, in respect of the persons, the offences, and the places where the offences are committed, the which Commission followeth in these words.

Hereupon they  
are called Justices  
of Oier and Ter-  
miner.

Elizabeth Dei gratia Angliæ, Franciæ & Hiberniæ Regina, fidei defensor, &c. Charissimis consanguineis suis Willielmo Marchioni Winton, Henrico Comiti South', &c. ac dilectis & fidelibus suis Rog' Manwood uni Justic' suorum de Banco, Johan' Jefferay uni Justic' ad placita coram nobis tenend' assign', Johan' Arundell militi, &c. Johan' S. John, Humf. Walrond, Will. Pool, Petro Edgecombe, Thomæ Morton, &c. Salutem. Sciatis quod assignavimus vos & tres vestrum, quorum aliquem vestrum vos præfat' Rogerum Manwood & Johan' Jefferay unum esse volumus Justiciarios nostros ad inquirendum per sacramentum proborum & legalium hominum de com' nostris South' Wiltes. Dorset, Somerset, Devon. & Cornub. & eorum quolibet ac aliis viis, modis, & mediis quibus melius sciveritis, aut poteritis tam infra libertates quam extra, per quos rei veritas melius sciri poterit de quibuscunque prodicionibus, misprisionibus prodicionum, insurrectionibus, rebellionibus, murdris, felonis, homicidiis, interfectionibus, burglariis, raptibus mulierum, congregationibus, & conventiculis illicitis, verborum prolationibus, coadjutationibus, misprisionibus, confederationibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, escapiis, contemptibus, falsitatibus, negligentis, concealamentis, manutenentiis, oppressionibus, cambipartiis, deceptionibus, & \* aliis malefactis, offensis, & injuriis quibuscunque, nec non accessar' eorundem infra com' prædict' & eorum quemlibet, tam infra libertates, quam extra per quoscunque & qualitercunque habit', fact', perpetrat' sive commiss'. Et per quos vel per quem, cui vel quibus, quando, qualiter, & quomodo, ac de aliis articulis & circumstantiis premiss'. & eorum aliquod vel aliqua qualitercunque concernen. Et ad easdem prodiciones & alia præmissa ( hac vice ) audiend. & terminand. secundum legem & consuetudinem Regni nostri Angliæ. Et ideo vobis mandamus quod ad certos dies & loca quos vos vel tres vestrum, quorum aliquem vestrum ex vobis præfat. Rogerum Manwood & Johannem Jefferay unum esse volumus, ad hoc provideritis diligenter super præmissis faciatis inquisitiones, & præmissa omnia & singula audiat & terminetis, ac ea faciatis & expleatis in forma prædicta, \* facturi inde quod ad Justitiam pertinet secundum legem & consuetudinem Regni nostri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vicecomitibus nostris com' prædict' quod ad certos dies & loca, quos vos vel tres vestrum, quorum aliquem vestrum ex vobis præfat. Rogerum Manwood & Johan' Jefferay unum esse volumus, eis scire feceritis venire fac' coram vobis, vel tribus vestrum, quorum aliquem

\* Nota, These  
general words.

\* Nota.



*aliquem vestrum vobis præfat' Rogerum Manwood & Johan' Jefferay unum esse volumus, tot & tales probos & legales homines de ballivis suis tam infra libertates, quam extra, per quos rei veritas melius sciri poterit & inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipsa apud Westm' 27 die Junii An. Regni nostri decimo octavo.*

2. Particular Commissions of Oyer and Terminer so called in respect of the persons of the offences, or of the places, whereof you shall find five presidents in the Register: \* 1. Against the Bishop of Winchester and his Ministers. 2. De nave fracta, if the goods ought to be taken for Wreck. 3. Of divers oppressions, &c. extortions, &c. by the Kings Ministers. 4. Of Oyer and Terminer for the Prior of Daventry. And 5. For the King in time of vacation, which you may read there.

a Concerning Commissions of Oyer and Terminer Ten Conclusions are to be observed. 1. That Oyers and Terminers shall not be granted, but before the Justices of the one Bench or the other, or the Justices errant, and that for great or horrible trespasses, of the Kings especial grace, according to the Statute in the time of his b Grandfather.

c And in the Register there is a Superfedeas, Quia non enormis transgressio, which word [enormis] is in the Statute of W.2. ubi sup. d To Commissioners of Oyer and Terminer a Writ of Superfedeas was delivered, Quia enormis transgressio non est, ideo superfedeant, for it was not but for cutting down of Trees. e And afterward a Writ of Procedendo under the Great Seal of later date was delivered to them to proceed secundum legem & consuetudinem Angliæ non obstante aliquo mandato, &c. by vertue whereof, notwithstanding the former Writ, they did proceed by advice of all the Justices. For a Writ of Superfedeas is one thing, and an absolute repeal or countermand of the Commission it self is another. A Superfedeas is but to stay, or forbear the proceedings, \* that is, super advisamentum federe, and is not mesun surcesse de advisement. And such may the cutting down of trees be, as it may be enormis transgressio, and therefore notwithstanding a Superfedeas the cause may proceed by a Writ of Procedendo. But after an absolute repeal or countermand by the King of the Commission it self, the Commissioners cannot proceed after by force of any Procedendo, but there must be a new Commission.

The second Conclusion is, that Commissions are like to the Kings Writs, such are to be allowed which have warrant of Law and continual allowance in Courts of Justice. For all Commissions of new invention are against Law until they have allowance by Act of Parliament. f Commissions of novel inquiries are declared to be void: g Commissions to assay Weights and Measures (being of new invention) are declared to be void, and that such Commissions should not be after granted. So as a Commission is a delegation by warrant of an Act of Parliament, or of the Common Law, whereby jurisdiction, power, or authority is conferred to others. Sapientis Judicis est cogitare tantum sibi esse permissum, quantum commissum & creditum. And it is a good rule for all Commissioners to hold the like, and ever to keep themselves within their Commission.

The Commons do petition, that certain Commissions lately sent to Cities for the making of certain Boats and Hullingers being done without assent of Parliament, might be repealed. The King doth answer, That after conference with the Lords, reasonable answer should be made. And that these Commissions took no effect, appeareth in this, That no further complaint was thereof made, and no such Commission was ever after granted.

At the petition of the Commons, the King granted that one Bennet Wilman, who was imprisoned to answer before the Constable and Marshal of England, should be tried according to the Common Laws of this Realm, notwithstanding any Commission to the contrary. And thereupon a Writ was accordingly directed to the Justices of the Kings Bench, as there it appeareth. Of these kinds

\* Regist. 125, 126, 127. F. N. B. 110, 111.

For particular commissions see 42 Aff. pl. 12.

34 Aff. p. 8. 29 E. 2. 30, 31. Rot. Claus.

13 H. 3. m. 15. de Petro de Rival.

a 2 E. 3. c. 2. 34 E.

3. c. 1. To be named by the Court and not the party. See the Statute of

42 E. 3. c. 1. which

extends to En-

quiries. 4 H. 4. c. 9.

Vide Rot. Parl.

50 E. 3. nu. 51.

for Commissions

of inquiry what

persons ought to

be named: so

note a diversity

between Commis-

sions of Enquiry,

and of Oyer and

Terminer.

b W. 2. 13 E. 1. c. 29

c Regist. 124, 125.

2 E. 3. cap. 2.

d 12 Aff. p. 21.

Vide Br. com. 12.

& Oyer & Ter-

miner. 4.

e Regist. 124, 125.

\* Superfed. unde.

f 18 E. 3. cap. 1.

g 18 E. 3. cap. 4.

Rot. Parl. 2 H. 4. nu. 22.

Rot. Parl. 5 H. 4. nu. 39.

Vid. 42 Aff. p. 5.

many



many moze authorities might be cited, but let us return to our Justices of Oier and Terminer.

42 Aff. p. 12.  
Vid. F.N.B. 110.b.  
Regist. 125. &c.

3 Mar. Br. Com-  
missions 23.

Vide 29 Aff. 33.

In the Reign of E. 3. the Justices were so careful, that no innovation should creep in concerning Commissions of Oier and Terminer, that certain Justices having their authority by Writ, where they ought to have had it by Commission, though it were of the form and words that the legal Commission ought to be, John Knivett Chief Justice by the advice of all the Judges resolved, that the said Writ was contra legem. And where divers Indictments were before them found against T.S. the same, and all that was done by colour of that Writ was damned.

The third conclusion is, that Justices of Oier and Terminer cannot proceed upon any Indictment, but upon Indictments taken before themselves, for their authority is, Ad inquirend, audiend, & terminand.

The fourth conclusion, that Justices of Oier and Terminer may upon an Indictment found proceed the same day against the party indicted. But against this there seems to be great authority: For in Kelwey fol. 159. b. it is thus said. Mem que en brieve de Oier & Terminer, P. 9 H. 8. sur le insurrection in Londres il fuit determine clerement per tous Justices Dengleterre, que Justices D'oier & Terminer ne puis inquire un jour, & mesme le jour determine, nient plus que Justices de Peace; mes Justices de Gaol delivery & Justices in Eire poien bien. It may be that he that set down this case took it upon trust, for it agreeth in effect totidem verbis with the Chronicle in 9 H. 8. fol. 843. and it is erroneous in divers main points. 1. That the Oier and Terminer was by Writ, where it was and ought to be by Commission, as hath been said. 2. That Justices of Oier and Terminer cannot enquire one day, and determine in the same day, which without question they may do: for proof whereof we will cite some few Records in stead of many.

Hil. 2 H. 4. Rot. 4.

1 H. 8. Sir Richard  
Empson case.  
Northampton.

Thomas Marks Bishop of Carlisle before Commissioners of Oier and Terminer was indicted, tried and adjudged all in one day, for High Treason.

Die Lunæ post festum Sancti Michaelis, Anno 1 H. 8. before Filmer, Brudnell, Palmes, &c. Commissioners of Oier and Terminer, Sir Richard Empson was indicted of High Treason and tried all in one day. And we desirous to see the entry, upon not guilty pleaded, it is thus: Ideo inter dict' Dominum Regem & dict' Rich. Empson militem in instant' diem ad horam primam post meridiem, &c. apud castrum de Northampton venerunt, &c. qui nec, &c. ad recognosc', &c. Ad quos quidem diem, horam, & castrum de Northampt' venit coram præfat' Justic' præd' Rich. Empson, &c.

2 Dec' Anno 3 E. 6. at Westm' before Richard Lister, Edward Montague, Roger Cholmeley, Edmond Merton, William Portman, and Humfrey Browne, and other Commissioners of Oier and Terminer, Robert Bell was indicted of High Treason and tried the same day. 10 Dec' Anno 3 E. 6. before Sir William Portman and other Justices of Oier and Terminer at Reading in the County of Berks Thomas Bonham was indicted of High Treason, and tried the same day. 4 Augusti 10 Eliz. John Felton was before Commissioners of Oier and Terminer in London indicted of High Treason, and tried the same day by the advice of all the Judges of England. *a* Nota, the award in the Roll by the Justices of Oier and Terminer to the Sheriff to return a Jury is not sufficient; but there ought to be a precept to the Sheriff, under the Seals of the Commissioners for the returning of a Jury, but otherwise it is in the Kings Bench.

*b* The third error in the said case of 9 H. 8. that Justices of Peace cannot inquire and try the same day, which without question they may, for they are special Justices of Oier and Terminer: and wherefore Justices of Oier and Terminer should not try the same day, as well as Justices of Gaol-delivery, and Justices in Cir, no sound reason can be given.

*c* The fifth conclusion is, that if any offence be prohibited by any Statute, and name not in what Court it shall be punished; or if the Statute appoint that it shall be punished in any Court of Record: In both these cases it may be heard and determined before Justices of Oier and Terminer. And so it seemeth to me

*a* And with this constant experience agreeth 4 H. 5. tit. Enquest 55.  
*b* 22 E. 3. cor. 44. holden for no law.  
*c* Vide *Le statut de* 5 E. 6. cap. 14. Of Forestallers, Ingrossers, and Regrators.  
33 H. 8. cap. 9. Of unlawful games.  
7 Eliz. Dier 236. See many Statutes wherein Justices of Oier and Terminer are appointed.

the Statute appoint the penalty to be recovered in any of the Kings Courts of Record, according to the opinion of Catlyn, Sanders, and Whiddon; for the Court of Oier and Terminer is the Kings Court of Record.

The sixth conclusion is, that the King may make a Commission of Association directed to others to joyn with the Justices of Oier and Terminer, and a Writ of Admittance to the Justices of Oier and Terminer, to admit the others into their society, which Writ is eldse. There is also a Writ of Si non omnes directed to the Justices of Oier and Terminer and to their Associates: the forms of all which you may read in the Register ubi supra, and in F. N. B. ubi supra. And in all these Commissions and Writs, the Justices are directed with this Rule, Facturi quod ad justitiam pertinet secundum legem & consuetudinem Angliæ, which is a true mark of a lawful Commission.

The seventh. If the Justices sit by force of the Commission, and do not adjourn the Commission, it is determined. Commissions Br 12.

The eighth. Justices of Oier and Terminer, or Justices of Peace, cannot assign a Coroner to an approver; for it is not within the Commission of either of them, but Justices of Gaol-delivery may do it. 9 H. 4. coron. 457.  
Stanf. pl. co. 143. c.

The ninth. Justices of Oier and Terminer shall send their Records and Process determined, and put in execution to the Exchequer at Mich. every year to be delivered there to the Treasurer and Chamberlains, &c. to keep them in the Treasury. 9 E. 3. cap. 5.

The tenth. None of these Commissioners, or of Assise, Gaol-delivery, or of the Peace, or other of the Kings Commissioners are countermanded by any new Commission, unless the new Commission be shewed unto them for so many as it is shewed unto; or that it be proclaimed in the County, or that the new Commissioners do sit and keep their Sessions by force of the new Commission, the former Commission is countermanded. 34 Aff. p. 8.  
L. 5 E. 4. fol. 12.  
10 E. 4. fol. 7.  
20 H. 7. 8.  
Kelwey 116.  
Br. Comm. 6.  
19 Eliz. Dier 355.  
Vi. infra pag. 169.

The Statute of 2 & 3 Ph. & M. cap. 18. for Cities or Towns Corporate being no Counties, but it extendeth not to Commissioners of Oier and Terminer.

And a right profitable Statute is made concerning this matter, viz. That no Process or suit before any Justices of Assise, Gaol-delivery, Oier and Terminer, Justices of the Peace, or \*other of the Kings Commissioners, shall not in any wise be discontinued by the making or publishing of any new Commission or Association, or by altering of the names of any of the said Justices or Commissioners, but that the new Justices and Commissioners may proceed in every behalf, as if the old Justices and Commissioners had still remained and continued not altered. 1 E. 6. cap. 7.  
\* Nota, the general words.



## C A P. XXIX.

*The Courts of Special Justices of Oier and Terminer, of and concerning, 1. Purveyors, 2. Misdemeanors of Villains, &c. 3. Sums of money collected for houses of Correction, &c. 4. Colledges, Hospitals, and Charitable uses.*

*And first of Purveyors.*

36 E. 3. cap. 4.  
Of Purveyors.

Buyers of Victual.  
&c.  
Takers of Car-  
riage.

**T**his Court is raised by the Statute of 36 H. 3. whereby it is enacted, That Commissions shall be made to two good men and lawful of every County, and the third to be of the Kings house. So that if any of the three come not, the two shall proceed to enquire of the behaviour and acts of the said buyers and takers, and how much the said buyers have taken and bought; and how much carriage: and to hear and determine the contempts, outrages, and trespasses in that behalf, as well at the Kings suit, as of every man that will complain of them.

These Commissions are to be granted *ex merito justitiæ*, and cannot be denied. And it is to be observed, that the action or suit given by the said Act is not popular; for either the King only is to have it, or the subject only that will complain.

And for better information to be made to the said Justices of the things aforesaid, the Steward, Treasurer, and Controller of the two Houses, (*viz.* of the King and Queen) at every Quarter or Half year, shall certify into the Chancery the parcels taken in every Town, and of every person; and the Chancellor shall send the said Certificate to the Justices which shall be so assigned. And that this Act extend and hold place as well against the Purveyors of the Great Houses of the said two Houses, as against the buyers or takers before named.

2. Concerning misdemeanors, &c. of Villains.

1 R. 2. cap. 6.

See the Statute of 1 R. 2. cap. 6.

3. Of and for Sums of money collected for Houses of Correction, or for the Poor, &c.

39 Eliz. cap. 4.  
1 Jac. cap. 7.

This Court is raised by the Statute of 39 Eliz. c. 4. as by the same appeareth, wherein this is to be observed, That their proceedings, judgments, and executions shall remain good and available in Law, without any redress to be had by suit in any other Court.

See the Second part of the Institutes the exposition of these Statutes.

4. Concerning Colledges, Hospitals, or Almes-houses, or for charitable and lawful purposes and uses.

39 Eliz. cap. 6;

It is lawful for the Lord Chancellor or Lord Keeper of the Great Seal,

Seal, and for the Chancelor of the Duchy of *Lancaster* (for lands within the County Palatine of *Lancaster*) to award Commissions under the Great Seal, or Seal of the County to the Bishop of the Diocess and his Chancelor, and to other persons of \* good and sound behaviour, to enquire by the oaths of twelve lawful men, &c. as by all other good and lawful means of all and singular Colledges, Hospitals, and other places, founded or ordained for the Charitable relief of poor, aged, and impotent people, maimed Souldiers, Schools of learning, Orphans, or for such other good, charitable and lawful purposes and intents. And also of Lands, Tenements and Hereditaments, Leases, Goods and Chattels given or appointed for the like lawful and charitable uses. As also for reparation of Highways, of Bridges, and Seabanks, for maintenance of Free-Schools and Poor Scholars, and of Orphans and fatherless children, and such like good and lawful charitable uses. And to enquire of the abuses and misdemeanors, misimployments, falsities, defrauding the trusts, alienations, and misgovernments, &c. And after such inquiry made upon hearing and examining thereof to set down such orders, judgments, and decrees as the said good and charitable uses may be fully observed in full, ample, and most liberal sort, &c. Which orders, judgments, and decrees (not being contrary to the orders, statutes, and decrees of the Donors or Founders) shall stand \* firm and good, according to the tenor and purport thereof: which Orders, Judgments, and Decrees are to be certified under the Seals of the Commissioners respectively, either into the Chancery of *England*, or of the County Palatine of *Lancaster*.

It is to be observed that when any Act of Parliament doth authorize the Lord Chancelor or Lord Keeper to make or grant any Commission under the Great Seal, that he may make or grant the same without any further warrant, because the King is party to the Act of Parliament, and there cannot be a greater warrant to the Lord Chancelor, &c. then the Act of Parliament.

\* No person interested, &c. to be a Commissioner.

Colledges in both Universities, of *Westm. Eaton*, or *Winchester*, and Cathedral Churches, &c. are excepted. It extends not to lands in Cities or Towns Corporate, where there is a special Governor, &c.

Nor to any Colledge, Hospital, or Free-school, which have special Visitors, &c.

But this exception extends not to Leases, Goods or Chattels.

\* The party grieved may complain to the Lord Chancelor or Lord Keeper, or to the Chancelor of the said Duchy, for their redress therein, &c. and they have power to judge, &c. according to equity.



## CAP. XXX.

*Justices of Gaol-delivery.**Their Authority is by Commission in these words.*

The Commission of  
Gaol-delivery.

Note, they are  
called the Kings  
Justices.

\* Their Commis-  
sion extends only  
to them that are  
in prison.

a Nota.

**E**Lizabeth. &c. Dilectis & fidelibus suis A. B. C. D. &c. Salutem. Sciatis quod constituimus, vos, tres, & duos vestrum, quorum aliquem vestrum vos prefat' A. B. &c. unum esse volumus, Justiciarios nostros ad Gaolam nostram castri nostri de C. de \* prison' in ea exist' hac vice delibe-  
rand. Et ideo vobis mandamus quod ad certum diem quem vos, tres vel duo vestrum (quorum vos prefat' A. B. &c. unum esse volumus) ad hoc provide-  
ritis, conveniatis apud castrum præd' ad gaolam illam deliberand', a factu-  
ri inde quod ad justiciam pertinet secundum legem & consuetudinem Regni  
nostri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde spectantibus.  
Mandavimus enim Vic' nostro Com' nostri M. quod ad certum diem quem  
vos, tres, vel duo vestrum (quorum vos prefat' A. B. & C. D. unum esse vo-  
lumus) ei scire feceritis, omnes prisiones ejusdem gaolæ & eorum attachia-  
menta coram vobis, tribus, vel duobus vestrum, (quorum aliquem vestrum ex  
vobis prefat. A. B. & C. D. unum esse volumus) ibidem venire fac. In cu-  
jus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.

See the second  
part of the Instit.  
Stat. de Glouc' c. 9

b 4 E. 3. cap. 2.

17 R. 2. cap. 9.

c Thrice in the  
year, and oftner  
if need be.

d Nota, few but  
effectual words.

e 4 E. 3. cap. 2.

b By the Law of the land, ne homines diu detineantur in prisona, but that they might receive plenam & celerem justitiam, this Commission was instituted, and by this Commission Gaols ought to be delivered c thrice in the year, and oftner if need be.

Their authority is by this Commission, which consisteth in d few words. Con-  
stituimus vos Justiciarios nostros ad Gaolam nostram castri nostri de C. de prisioni-  
bus in ea existentibus hac vice deliberand'. e These Justices ought to be, Bone  
gents & sages auters que des places, &c.

Upon this authority and by Statutes given unto them, thirteen conclusions  
do follow.

f 4 E. 3. cap. 2.

3 Mar. Br. Com-  
missions 23.

2 R. 3. Coron. 47.

1. f Justices of Gaol-delivery may arraign any man that is in prison in that  
Gaol upon an indictment of Felony, Trespass, &c. before Justices of Peace,  
though it were not found before themselves, which (as hath been said) Justices  
of Dier and Terminer cannot do. Justices of Peace shall deliver their Indict-  
ments to the Justices of Gaol-delivery.

4 H. 5. Enquest 55.

2. They shall take a panel of a Jury returned by the Sheriff, without mak-  
ing any precept to him, as Justices of Dier and Terminer (as hath been said)  
ought to make. And the reason of the difference is, because a general commands-  
ment is made to the Sheriff by the Justices of Gaol-delivery to return Juries  
against their coming: but if they have a special Commission, otherwise it is by  
Hankeford.

2 R. 3. Coron 47.

3. They may deliver suspects for felony, &c. by Proclamation, against whom  
there is no sufficient evidence produced to the Great Inquest to indict them, &c.  
which Justices of Dier and Terminer, or Justices of Peace cannot do.

Pasch. 29 Eliz. co-  
ram Rege inter  
Apharry & Mor-  
gan in Appeal.

9 H. 7. 9.

2 R. 3. Coron. 47.

4. They may inquire and take indictments of felony, &c. of prisoners before  
them, & proceed upon them. And so was it resolved in an appeal of murder broughe  
by Apharry against Morgan, who pleaded that he was autrefoitz indicted and con-  
victed of the same felony, and had his Clergy before Justices of Gaol-delivery,  
& pleaded over to the felony (& the plea allowed.) And so many Justices of Dier  
and

and Terminer do, which is to be observed by the judicious Reader, for both of them have authority to enquire, hear, and determine of such as be prisoners in the Gaol: and in that case they have a concurrent authority.

5. If a man be indicted before Justices of the Peace, and thereupon outlawed, and is taken and committed to prison, the Justices of Gaol-delivery may award execution of this prisoner. 15 H. 7. 5. b.

6. They may assign a Coroner to an Approver, and make Proces against the Appellee in a foreign County.

7. \* They may punish those that let men to bail or mainprize, which are notailable by Law, or suffer them to escape.

By the Statute of 1 E. 6. it is provided in these words.

And be it, &c. That in all cases where any person or persons heretofore have been, or hereafter shall be found guilty of any manner of Treason, Murder, Manslaughter, Rape, or other felony whatsoever; for the which judgment of death should or may ensue, & shall be reprieved to prison without judgment at that time given against him, her, or them so found guilty, that those persons, that at any time hereafter shall by the Kings Letters Patents be assigned Justices to deliver the Gaol where any such person or persons found guilty shall remain; shall have full power and authority to give judgment of death against such person so found guilty and reprieved, as the same Justices before whom such person or persons was or were found guilty might have done, if their Commission of Gaol delivery had remained and continued in full force and strength.

8. Here by the judgment of the whole Parliament this conclusion doth follow, that Justices of Gaol delivery, according to the generality of the words of their Commission, may deliver the Gaol of prisoners committed for High Treason, which we prefer before any private opinion, especially concluding with a Quære.

9. a Justices of Gaol delivery shall send their Records and Proces determined, and put in execution to the Exchequer at Michaelmas every year to be delivered there to the Treasurer and Chamberlains, &c. to keep them in the Treasury.

10. b Justices of Gaol delivery may receive Appeals of robbery and murder by Will, but the Appellars must be in prison before them.

11. c To these Justices Commissions of Association, and Writs of admittance, and Si non omnes (as hath been said of Justices of Dier and Terminer) are directed.

12. d Justices of Gaol delivery shall keep their Sessions in the principal and chief Towns of the Counties where the Shire Courts of the same Counties be holden.

13. By the Statute of 2 & 3 Ph. & Mar. it is provided, That all Commissions of the \* Peace or Gaol delivery to any City or Town Corporate not being a County of it self, shall stand and remain, the granting of any like Commission of the Peace or Gaol delivery in any Shire, Lathe, Rape, Riding, or Wapentake, being of a later date, to the contrary notwithstanding.

See in the Chapter of Dier and Terminer Conclusion 9. more concerning Justices of Gaol delivery. Vide 44 Aff. pl. 21.

See authorities lately granted to Justices of Gaol delivery in the Chapter next ensuing of Justices of Peace.

Stat. de Appellat.  
28 E. 1.  
Stanf. Pl. cor. 143. c  
\* 27 E. 1. Stat. De  
finibus c. 3. 4 E. 3.  
cap. 2. 1 & 2 Ph. &  
Mar. cap. 13.  
1 E. 6. cap. 7.  
Treason, &c.

27 E. 1. de finib.  
cap. 3.  
See 28 E. 1. De  
Appellatis, the  
recital.

V. 2 R. 3. cor 47.  
Case de Colinborn  
Stanf. pl. cor. 57.  
58. & 182. a.  
49 E. 3. cap. 5.  
14 H. 7. fol. 15. b.  
b 13 H. 4. fol. 10.  
Dier fol. 99.  
3 H. 7. cap. 1.  
Stanf. pl. cor.  
c 2 E. 3. cap. 2.  
d 6 R. 2. cap. 5.

2 & 3 Ph. M. c. 18.  
\* 11 H. 6. cap. 6.



## CAP. XXXI.

*Justices of Peace.*

**S**IR Anthony Fitz-Herbert, one of the Justices of the Court of Common Pleas, and divers others have written of the Jurisdiction and power of Justices of the Peace, both in the Court of the Sessions of Peace, as without ; to whose labours I refer the Reader.

And it is such a form of subordinate government for the tranquillity and quiet of the Realm, as no part of the Christian world hath the like, if the same be duly executed.

Before the Con-  
quest, *De pace vio-*  
*lata.*  
4 H. 7. cap. 12.

To the former Treatises are necessary to be added certain Acts of Parliament made in the 21 year of our late Sovereign Lord King James, and certain Caveats, Additions, and Observations necessary to be known. *De pace violata ; vide int' leges Alveredi, cap. 36. Edwardi cap. 6.*

But as a Preface to all that shall be said of the office and duty of Justices of Peace, we will begin with that which is enacted by the Statute of 4 H. 7. as a necessary caveat to all Justices of Peace, *viz.* The King considereth that a great part of the wealth and prosperity of the land standeth in that, that his subjects may live in surety under his peace in their bodies and goods : and that the husbandry of this land may increase and be upholden, which must be had by due execution of Laws and Ordinances, chargeth and commandeth the Justices of the Peace to endeavour them to do and execute the tenor of their Commission, the said Laws and Ordinances ordained for subduing of the premises, as they will stand in love and favour of his Grace, and in avoiding the pains that he ordained, if they do the contrary. And over that he chargeth and commandeth, that every man, what degree or condition that he be of, that let them in word or deed to execute their said authority in any manner or form abovesaid, that they shew it to his Grace ; & if they do it not, and it come to his knowledge by other then by them, they shall not be in his favour, but taken as men out of credence, and be put out of Commission for ever. And over this he chargeth and commandeth all manner of men, as well the poor as the rich, which be to him all one in due ministration of Justice, that is hurt or grieved in any thing, that the said Justice of Peace may hear, determine, or execute in any wise, that he so grieved make his complaint to the Justice of the Peace that next dwelleth unto him, or to any of his fellows, and desire a remedy : and if then he have no remedy, if it be nigh such time as his Justices of Assises come into that Shire, that then he so grieved shew his complaint to the same Justices ; and if he then have no remedy, or if the complaint be made long afore the coming of the Justices of Assise, then he so grieved come to the Kings Highness or to his Chancellor for the time being, and shew his grief : and his said Highness then shall send for the said Justice to know the cause why his said subjects be not eased, and his Laws executed. Whereupon if he find any of them in default of executing of his Laws in these premises, according to his high



high commandment, he shall do to him so offending to be put out of the Commission, and furthermore to be punished according to his demerits. And over that his said Highness shall not let for any favour, affection, cost, charge, nor none other cause, but that he shall see his Laws to have plain and true execution, and his subjects to live in surety of their lands, bodies and goods according to his said Laws, and the said mischiefs to be avoided, that his subjects may increase in wealth and prosperity to the pleasure of God.

And where the words of the said Act be: And further to be punished according to his demerits. These words are so to be understood, that he shall be punished in an ordinary course of justice by way of indictment upon this Act, for his contempt, &c. and not by any absolute power, as hath been often observed.

It is to be observed, that when Justice Fitzherbert and some others did write of the authority of Justices of Peace, the Commission of the Peace stood overburdened and incumbred with divers Statutes, some whereof were before, and some since repealed: and with some, whereas there was none such, and stuffed with many vain and unnecessary repetitions, and many other corruptions crept into it by mistaking of Clerks, &c. For amendment and correction whereof (being a matter of so great importance) Sir Christopher Wray Chief Justice of England, Mic. 32 & 33 Eliz. assembled all the Judges of England, and upon personal had of the former Commission of the Peace, and upon due consideration had thereupon, and often conferences between themselves, they resolved upon a reformation of the former, with divers additions and alterations both in matter and method, as it now standeth at this day: and there needeth yet another reformation of that also: for since that time divers Statutes then in force have been repealed, and divers have expired: as for example, All the Statutes of Liberties inquirable by Justices of Peace are repealed by the Statute of 3 Car. c. 4. saving the Statute of 1 R. 2. cap. 7. inquirable before Justices of Assize, Vide supra, p. 159. Also the Statute of 27 H. 8. c. 22. that the owner of any scite or precinct, &c. of any dissolved religious house under the value of 200 l. per annum, for the keeping of honest and continual household thereupon, and inquirable by Justices of Peace is repealed by 22 Jac. Regis c. 28. And the Statute of 13 R. 2. cap. 8. and 4 H. 4. c. 25. for taking by any Inholders in gain above a half penny in a bushel of Oats over the common price in the market, and inquirable by Justices of Peace be also repealed by the said Act of 21 Jac. Likewise the Statute of 39 El. cap. 2. concerning husbandry and tillage, which being but a probationer for a time, was discontinued 21 Jac. And the Statutes concerning houses of husbandry and tillage in 4 H. 7. 7 H. 8. 27 H. 8. 5 E. 6. and 5 Eliz. are all repealed by 21 Jac. and divers others, &c.

It is a good rule therefore for all Judges and Justices whatsoever, that have jurisdiction by any Statute, which at the first was temporary, or for a time, to consider well before they give judgment, whether that Statute have been continued or made perpetual: and if it were at the first made perpetual, whether it be not repealed or altered by any latter Statute. Erudimini qui judicatis terram. See in the Second part of the Institutes the Exposition upon the Statute of 22 H. 8. cap. 5.

Justices of Peace may inquire if Estreats be not shewed by Sheriffs, &c. to the party indebted and totted. A necessary Law for the ease of the subject.

Concerning the nomination of Justices of Peace, see the Statutes of 12 R. 2. cap. 2. 2 H. 5. Stat. 2. c. 1. 18 H. 6. cap. 11. whereunto you may add, that before all these another Act not in print was made in 28 E. 3. as well for their nomination, as how and by whom they shall be discharged. Certain it is that he, that is named in the Commission of Peace under the Great Seal to be a Justice of Peace, is a lawful Justice of Peace.

Compare the old with the new Commission, and the reformations, additions and alterations will appear Mich. 32 & 33 El. the Commission of the Peace reformed by all the Judges of England 13 H. 4. c. 3. 8 H. 6. c. 4. 8 E. c. 2. & c. 27 H. 8. c. 22. 5 El. c. 2.

13 R. 2. cap. 8.  
4 H. 4. cap. 25.

39 El. c. 2. 4 H. 7. c. 19. 7 H. 8. c. 1. 27 H. 8. c. 22. 5 E. 6. c. 5. 5 El. cap. 2.

42 E. 3. c. 9. W. 1. c. 19. 7 H. 4. c. 3.

Rot. Par. 28 E. 3. nu. 17.  
37 E. 3. nu. 18.  
50 E. 3. nu. 64.



21 Jac. Reg. c.4.

At the Parliament holden Anno 21 Jac. Regis, there was an excellent Law made, entituled, An Act for the ease of the Subject concerning Informations upon penal Statutes. which Act for that it principally concerneth Justices of Peace, is here inserted in hæc verba as followeth.

This was the ancient and prudent policy of Parliaments (as before it hath appeared) that justice might be administred & tried in their proper Counties and not to be drawn up to the Courts at *Westm<sup>r</sup>* for the causes in this preamble expressed. *a* Of this kind of men it was formerly truly said,

*Hoc genus hominum semper vitabitur, & tamen semper in civitate retinebitur.* But this Law consisting of seven parts remedied all the former inconveniences and the abuses of these troublesome persons.

Whereas the offences against divers and sundry penal Laws and Statutes of the Realm may better, and with more ease and less charge to the subject, be commenced, sued, informed against, prosecuted and tried in the Counties where such offences shall be committed. And whereas the poor Commons of this Realm are grievously charged, troubled, vexed, molested, and disturbed by divers *a* troublesome persons, commonly called Relators, Informers, and Promoters, by prosecuting and enforcing them to appear in his Majesties Courts at *Westminster*, and to answer offences supposed by them to be committed against the said penal Laws and Statutes, or else to compound with them for the same.

*b* Nota before Justices of

1. Assise.
2. *Nisi prius*.
3. Gaol-delivery.
4. Oier & Terminer.
5. Peace.

But the greatest care for the due execution of this Act will belong to the Justices of Peace, whereof there be many learned in the Laws.

*c* Note this Act giveth Justices of Peace no new power in cases where former Acts gave them none, and so of the rest of the Justices here named.

1. For remedy whereof be it enacted by the Authority of this present Parliament, that all offences hereafter to be committed against any penal Statute, for which any common Informer or Promoter may lawfully ground any popular action, bill, plaint, suit or information *b* before Justices of Assise, Justices of *Nisi prius*, or Gaol-delivery, Justices of Oier and Terminer, or Justices of the Peace in their general, or quarter Sessions, shall after the end of this present Session of Parliament be commenced, sued, prosecuted, tried, recovered and determined by way of action, plaint, bill, information or indictment before Justices of Assise, Justices of *Nisi prius*, Justices of Oier and Terminer, and Justices of Gaol-delivery, or before the Justices of Peace of every County, City, Borough, or Town corporate, and liberty, *c* having power to enquire of, hear and determine the same within this Realm of *England* or Dominion of *Wales*, wherein such offences shall be committed, in any of the Courts, places of Judicature, or liberties aforesaid respectively, only at the choice of the parties, which shall or will commence suit, or prosecute for the same, *d* and not elsewhere, save only in the said Counties, or places usual for those Counties or any of them.

*e* By this branch process of Outlawry doth lye upon every popular action, a necessary clause for execution of Justice.

*f* This clause was added that the Kings Majesty should be bound expressly by this Act, that no information in the Courts at *Westminster* should be exhibited by the Kings Attorney general, by any common Informer, or other person whatsoever. Note the generality of these words.

*d* So as they cannot be commenced, &c. in any of the Kings Courts at *Westminster*.

2. *e* And that like process upon every popular action, bill, plaint, information or suit, to be commenced, or sued, or prosecuted after the end of this present Session of Parliament by force of, or according to the purport of this Act, be had and awarded to all intents and purposes as in an action of trespass *vi & armis* at the Common Law.

3. *f* And that all and all manner of informations, actions, bills,

plaints,



plaints, and suits whatsoever hereafter to be commenced, sued, prosecuted, or awarded either by the Attorney General of his Majesty, his Heirs, or Successors for the time being, or by any Officer or Officers whatsoever for the time being, or by any common Informer, or other person whatsoever in any of his Majesties Courts at *Westminster*, for or concerning any of the offences, penalties or forfeitures aforesaid, shall be void, and of none effect, any Law, Custom, or Usage to the contrary thereof notwithstanding.

4. And be it further enacted by the Authority aforesaid, that in all Informations to be exhibited, and in all Bills, Courts, Plaints, and Declarations in any Action or Suit to be commenced against any person or persons, either by, or on the behalf of the <sup>g</sup> King or any other for or concerning any offence committed, or to be committed against any penal Statute, the offence <sup>b</sup> shall be laid and alledged to have been committed in the said County where such offence in truth was committed, and not elsewhere. And if the Defendant to any such Information, Action or Suit, pleadeth that he oweth nothing, or that he is not guilty, and the Plaintiff or Informer in such Information, Action or Suit upon evidence to the Jury that shall try the issue, shall not both prove the offence laid in the said Information, Action or Suit, and that the same offence was committed in that County, then the Defendant and Defendants shall be found not guilty.

5. And be it further enacted by the Authority aforesaid, that no Officer or Minister in any Court of Record shall receive, file, or enter of Record any Information, Bill, or Plaint, Count, or Declaration, grounded upon the said penal Statutes or any of them, which before by this Act are appointed to be heard and determined in their proper Counties, until the Informer, or Relator hath first taken a corporal Oath before some of the Judges of that Court, that the offence or offences laid in such Information, Action, Suit or Plaint, was or were not committed in any other County, then where by the said Information, Bill, Plaint, Count or Declaration the same is, or are supposed to have been committed, and he believeth in his Conscience the offence was committed within a year before the Information or Suit within the same County, where the said Information or Suit was commenced, the same Oath to be there entred of Record.

6. And be it also enacted by the Authority aforesaid, that if any Information, Suit, or Action shall be brought, or exhibited against any person or persons for any offence committed, or to be committed against the form of any penal Law either by, or on the behalf of the King, or by any other, or on the behalf of the King and any other, it shall be lawful for such Defendants to plead the ge-

afore, specially before Justices of Peace, there are not such skilful Prothonotaries and Clerks for good pleading as were in the Kings Courts at *Westminster*; and therefore the makers of this Law provided that the Defendant might plead the general issue. 2. For the ease and benefit of the subject, great charges growing by special pleading. 3. For avoiding of demurrers upon strict and nice points of pleading. 4. For avoiding of Writs of Error, which often are brought in respect of special pleading.

<sup>g</sup> Note, the King expressly named.

<sup>b</sup> Shall be laid in the proper County. This clause is but in affirmance of the true institution of the Common Law, for *vicini viciniore facta presumuntur scire*, and for these Informers they were best trusted where they were least known. This is a very beneficial clause for every Defendant to take hold of.

<sup>i</sup> That is in any of the Courts before Justices of Assize, and other Justices named in the first part of this Act.

<sup>k</sup> The Informer must take an oath before his information, &c. be received.

A beneficial clause also for the Defendant. <sup>l</sup> Note within a year before the information.

Vid. 7 Jac. ca. 9. 21 Jac. cap. 12.

The reasons of this clause were, 1. For that in the Courts



neral issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the Jury that shall try the same, which matter being pleaded had been a good and sufficient matter in Law, to have discharged the said Defendant or Defendants against the said Information, Suit, or Action; and the said matter shall be then as available to him or them to all intents and purposes as if he, or they had sufficiently pleaded, set forth, or alledged the same matter in bar, or discharge of such Information, Suit, or Action.

Provided always, that this Act or any Clause contained therein shall not extend to any Information, Suit or Action, grounded upon any Law or Statute made against Popish Recusants, or for, or concerning Popish Recusancy, or against those that shall not frequent the Church and hear Divine Service, nor to any Information, Suit, or Action for maintenance, champerty, or buying of titles, nor to any Suit, or Information grounded upon the Statute made in the first year of the Reign of our Sovereign Lord the King, of a Subsidy granted to the King, of Tunnage, Poundage, Wool, &c. nor for, or concerning the concealing or defrauding the King his Heirs or Successors of any Custom, Tunnage, Poundage, Subsidy, Impost or Prifage, or for transporting of Gold, Silver, Ordinance, Powder, Shot, Munition of all sorts, Wool, Woolfels, or Leather, but that such offence may be laid

\* This proviso referreth only to the County, &c. So as no Information,

&c. grounded upon any of the Statutes in this proviso mentioned can be commenced, &c. in any of the Kings Courts at Westminster, but before the Justices of Assise, Justices of Nisi prius, or Gaol-delivery, Justices of Oler and Terminer, or Justices of Peace.

There was another mischief which lay heavy upon the subject, whereof advantage might be taken by any Informer, which was not provided for by this Act, viz. divers former Statutes, which in respect of the alteration of times lay as snares upon the people, and at this day could not be performed. For example: That a yard of broad-cloth of the finest making scarlet grained, or other cloth grained, what colour soever it be, should not be sold above the value of 16 s. a broad yard, &c. Which Act and many other Acts of Parliament of like nature, and other obsolete Laws to a very great number, were at this Parliament utterly repealed, and made void. We advise therefore the Justice of Peace (for to him we principally direct our speech, though it concern the rest of the Justices before named) seriously to read over that Act, where all those obsolete Laws are particularly mentioned and repealed, and therefore no Information, &c. can be commenced, &c. upon any of them.

At the same Parliament also Anno 21 Jac. Regis, another good and profitable Law was made concerning Justices of Peace and others, the tenor whereof is as followeth.

21 Jac. cap. 12.

*The Title. An Act to enlarge and make perpetual the Act made for ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Maiors, Constables, and certain others his Majesties Officers for the lawfull execution of their Office, made in the 7. year of his Majesties most happy Reign.*

Whereas an Act intituled, an Act for ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Maiors,

Maiors, Constables, and certain others his Majesties Officers for the lawful execution of their Office made in the seventh year of his Majesties most happy Reign of *England*; was made to continue but for seven years, and from thence to the end of the next Parliament, after the said seven years, which by experience hath since been found to be a good and profitable Law. Be it therefore enacted by the Kings most excellent Majesty, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, that the said Act shall from and after the end of this present Session of Parliament be perpetual, and have continuance for ever.

7 Jac. Regis ca. 5.  
That Act extended to 1. Justices of Peace.  
2 Maiors or Bailiffs of Cities or Towns corporate.  
3 Headborows.  
4 Portreves.  
5 Constables.  
6 Tithingmen.  
7 Collectors of Subsidies and Fifteenths, and not to any Officer not named in that Act.  
Made perpetual.

And be it further enacted by the Authority aforesaid, that all Churchwardens, and all persons called Sworn-men, executing the Office of the Churchwardens, and all Overseers of the poor, and all others, which in their aid or assistance, or by their commandment shall do any thing touching or concerning his or their Office, or Offices, shall hereafter be enabled to receive and have such benefit and help by vertue of the said Act, to all intents, constructions and purposes, as if they had been specially named therein.

This Act of 21 Jac. extendeth to  
1. Churchwardens.  
2. All persons called Sworn-men executing the office of Churchwardens  
3. All Overseers of the poor.  
4. All others in their aid and assistance, and not to any other Officer or person not named in this Act.

And whereas notwithstanding the said Statute, the Plaintiff is at liberty to lay his Action which he shall bring against any Justice of Peace, or other Officer in any forraign County, at his choice, which hath proved very inconvenient unto sundry of the Officers, and Persons aforesaid, that have been impleaded by some contentious, and troublesome persons in Countries far remote from their places of habitations.

Be it therefore further enacted by the Authority aforesaid, that if any Action, Bill, Complaint, or suit upon the case, Trespass, Battery, or false Imprisonment shall be brought after the end of this present Session of Parliament against any Justice of Peace, Maior, or Baylif of City, or Town corporate, Headborow, Portreve, Constable, Tything-man, Collector of Subsidy or Fifteens, Churchwardens, and persons called Sworn-men executing the office of Churchwarden, or Overseer of the Poor, and their Deputies, or any of them, or any other which in their aid, or assistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause or thing by them or any of them done by vertue or reason of their or any of their office or offices, that the said Action, Bill, Complaint, or Suit shall be laid within the County where the Trespass or Fact shall be done and committed, and not elsewhere. And that it shall be lawful to and for all and every person and persons aforesaid, to plead thereunto the general issue, that he or they are not guilty, and to give such special matter in evidence to the Jury which shall try the same, as in or by the said former Act is limited or declared. And that if upon the trial of any such Action, Bill or Suit, or the Plaintiff or Plaintiffs therein shall

This branch extendeth to  
1. Actions upon the case.  
2. Trespass.  
3. Battery.  
4. False imprisonment.

The Actions aforesaid shall be laid in the proper County.

To plead the general issue.



The Plaintiff upon the evidence must prove that the cause of Action was done or had in the proper County.

not prove to the Jury which shall try the same, that the Trespass, Battery, Imprisonment, or other Fact, or cause of his, her, or their such Action, Bill, Complaint, or Suit was, or were had, made, committed, or done within the County where such Action, Bill, Complaint, or Suit shall be laid, That then in every such case, the Jury which shall try the same shall find the Defendant and Defendants in every such Action, Bill, Complaint, or Suit, not guilty, without having any regard or respect to any evidence given by the Plaintiff or Plaintiffs therein touching the Trespass, Battery, Imprisonment, or other cause, for which the same Action, Bill, Complaint, or Suit is, or shall be brought: and if the verdict shall pass with the Defendant or Defendants in any such Action, Bill, Complaint, or Suit, or the Plaintiff or Plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the Defendant or Defendants shall have such double costs, and all other advantages and remedies, as in and by the said former Act is limited, directed, or provided.

21 Jac. ca. 15.

*Sic* also another Act the same Parliament, anno 21 Jacobi Regis, intituled, *An Act to enable Judges and Justices of the Peace to give restitution of possession in certain cases.*

1. Judges, or Justices of the Kings Bench.

4 H. 7. 18. b.

7 E. 4. 18.

2. Justices of the

Peace. 8 H. 6. ca. 9.

li. 9. f. 118. b. 2 H. 8.

Kelw. 159.

Not Justices of Oier and Terminer, nor any other Justice.

Instead of *disseisin* which was formerly in the Indictment, now it shall be said, *ejecit, expulit, & amovit, or detinuit.* This Act extendeth to

1. Tenant for years.

2. Tenant by copy, &c.

3. *Guardens en Chivalry.*

4. Tenant by Elegit.

5. By Statute merchant.

6. By Statute Staple, which no former Act extended unto.

Be it enacted by the Authority of this present Parliament, that such Judges, Justices, or Justice of the Peace, as by reason of any Act or Acts of Parliament now in force are authorised, and enabled upon inquiry to give restitution of possession unto Tenants of any Estate of Freehold, of their Lands, or Tenements which shall be entred upon with force, or from them with-holden by force, shall by reason of this present Act have the like and the same authority and ability from henceforth (upon indictment of such forcible entries, or forcible whithholdings before them duly found) to give like restitution of possession unto Tenants for term of years, Tenants by copy of Court-rol, Guardians by Knights service, Tenants by Elegit, Statute merchant and staple of Lands, or Tenements by them so holden, which shall be entred upon by force, or holden from them by force.

*Sic* 8 H. 6. cap. 9. & 31 El. cap. 11.

In Termino Pasch. 6 E. 1. Coram rege prima fuit institutio Justiciariorum pro pace conservanda.

Rot. Parl. 18 E. 1. fo. 3. nu. 41. Homines de Chesershire qui onerati sunt de servitibus pacis sustentandis, petunt exonerari de oneribus Statuti Winton, &c. Rex non habet consilium mutandi consuetudines, nec Statuta sua revocandi.

Dors. Claus. An. 8 R. 2. m. 5.

The Lord Chancellor and others of the Privy Council do remode divers Justices of Peace for that they were retaining to the Archbishop, &c.

Rot. Par. 3 R. 2. nu. 39. Regula.

*Sic* a profitable and good Law for Justices of Peace in the Parliament Roll, and not in Print.

But let us return to the duty of a Justice of Peace, for *Melius est recurrere quam male currere.*

One or more Justice or Justices of Peace cannot make a Warrant upon a bare surmise to break any mans house to search for a Felon, or for stolen goods, for they being created by Act of Parliament have no such Authority granted unto them by any Act of Parliament: and it should be full of inconvenience, that  
it



it should be in the power of any Justice of Peace being a Judge of Record, upon a bare suggestion to break the house of any person of what state, quality, or degree soever, and at what time soever, either in the day or night, upon such surmises. But if the party suspected be indicted, then the Sheriff by force of the Kings writ may demand the party indicted to be delivered; and that not done, he may break open the house, &c. and apprehend the Felon, for that the Kings writ is a Non omittas propter aliquam libertatem: but if the Kings process be in debt, trespass, &c. at the suit of a party, there the Sheriff by force of the Kings writ cannot break open the house of the subject. And so is the book in 13 E. 4. fol. 9. which saith; It was holden, that for felony or suspicion of felony a man may break the house to take the Felon, and two reasons are pickt in the book. 1. Because it is for the Common weal to take them. 2. Because the King hath an interest in the felony, and in such case the writ is a Non omittas propter aliquam libertatem: but otherwise it is for debt, or trespass, the Sheriff or any other cannot break the house to take him. And yet it is to be understood, that if one be indicted of felony, the Sheriff may by process thereupon after denial made, &c. break the house for his apprehension, or upon Hue and Cry of one that is slain or wounded, so as he is in danger of death, or robbed, the Kings Officer that pursueth may (if denial be made) break a house to apprehend the delinquent: but for Justices of Peace to make warrants upon surmises, for breaking the houses of any subjects to search for felons, or stolen goods, is against Magna Carta, Nec super eum ibimus, nec super eum mittimus, nisi per legale iudicium Parium suorum, vel per legem Terræ: and against the \* Statute of 42 E. 3. c. 3. &c. And we hold the resolution of the Court, viz. of Brudnel, Pollard, Broke, and Fitzherbert in 14 H. 8. to be Law, that a Justice of Peace could not make a warrant to take a man for felony, unless he be indicted thereof, and that must be done in open Sessions of the Peace. For the Justice himself cannot arrest one for felony, unless he himself suspect him, (as any other may) and by the same reason he cannot make a warrant to another. And all this appeareth in that book, and is agreeable with our former books in 42 Aff. p. 5. & 12. & 24 E. 3. tit. com. Br. 3. and with reason, for this warrant to take a Felon should be in nature of a Capias for felony, which cannot be granted before indictment, nor after indictment, but in open Court. And this is the reason wherefore Justices of Peace before indictment could not have let any charged with felony or suspicion to bail, or mainprize, because Justices of Peace are Judges of Record, and ought to proceed upon Record, and not upon surmises. Sed distinguenda sunt tempora, & concordabis leges: For since the Statutes of 1 & 2 Ph. & Mar. c. 13. and 2 & 3 Ph. & Mar. c. 10. (the words whereof be, That the said Justices, or one of them being of the Quorum, when any such prisoner is brought before them for any manslaughter, or felony, shall take examination, &c.) if any person be charged with any manner of felony, and information be given to a Justice of Peace of the felony or suspicion of felony, and heareth that the Kings peace may be broken in apprehending of him, the said Justice may make a warrant to the Constable of the Town to see the Kings peace kept in the apprehending and bringing of the party charged with or suspected of the felony before him, and the party that giveth the information of his knowledge or suspicion to be present and arrest the delinquent; and in this manner it is implied and intended by the said Statutes for the prisoner to be brought before them: and this (as we take it) agreeth with the common use and observance ever since those Statutes. And this agreeth also with the said book in 14 H. 8. that a Justice of Peace may make his warrant for the salvation of the peace, meaning to assist the party that knoweth or hath suspicion of the felony. But in this case neither the Constable, nor any other can break open any house for the apprehension of the party suspected or charged with the felony, for it is in Law the arrest of the party that hath the \* knowledge or suspicion, who cannot break open

13 E. 4. 9. 20 E. 4. c. b. He may enter into the house the door being open. See lib. 5. f. 9. 1392. Semains case.

7 E. 3. 16. 29 E. 3. 9. 2 E. 4. 8. 9 E. 4. 26.

Mag. Car. c. 29.

\* Read the Stat. 14 H. 8. fol. 16. a.

Vid. 1 R. 3. cap. 3. 3 H. 7. cap. 3. 1 & 2 Ph. & Mar. cap. 13. & 2 & 3 Ph. & Mar. c. 1.

\* 2 H. 7. 3 & 16. 4 H. 7. 2. 3. 6 H. 7. 4. 10 H. 7. 17. 20 H. 17 E. 4. 5. 27 H. 8. 23. a.

7. 12. 7 E. 4. 20. 8 E. 4. 3. b. 10 E. 4. 17. 9 E. 4. 26. 11 E. 4. 4. 13 E. 4. 9. 7 H. 4. 35. 17 E. 4. 5. 27 H. 8. 23. a. Dier 7 Eliz. 236. b.

any



\* 20 E. 4. fol. 6.  
17 E. 4. 5. a.  
Lam. fol. 188. 189.

any house: but if the \* door of the house be open, he may enter into the same, and arrest the part. Thus much upon reading of some that have written of the Office of Justices of Peace, we have thought good to add. For though commonly the Houses or Cottages of poor and base people be by such Warrants searched, &c. yet if it be lawful, the houses of any subject, be he never so great, may be searched, &c. by such Warrant upon bare surmises.

† Bail and Mainprise.

See the 2. part of the Institutes, W. 1. c. 15. fol. 472, &c. Glanv. lib. 14. ca. 1. W. 1. c. 15. 27 E. 1. stat. de finibus c. 3.

¶ Of bail and bailment.

2 Bracton lib. 3. fol. 123. And herewith agreeth the Register, fol. 133. b. Fleta lib. 1. ca. 26. Mirror c. 2. Sect. 14.

Conft. de Norm.

b 24 E. 3. 33.  
25 E. 3. 42. b.  
mainprife 1.  
3 E. 3. cor. 354.  
2 Eliz. Dier 179.  
F. N. B. 246. c.

c 33 E. 3. Mainprife 12.

d This agreeth with the former Etymology.

e 36 E. 3. ib. 13. acc.  
4 H. 6. 8. 22 H. 6. 59.  
32 H. 6. fol. 4. acc.  
39 H. 6. 27. 21 H. 7.

33.  
\* Vid. infra. †  
f 36 E. 3. ubi sup.  
Br. Mainprife 89.

21 H. 7. 20. b.  
per Fineux.  
F. N. B. 251. d.

See Lamb. fol. 352.  
353. F. N. B. 251. f.

Nora, amercientur.

\* Vid. supra. †

• † Concerning bailment and mainprife, and what offenders wereailable by the Common Law, you may read in the Second part of the Institutes, W. 1. c. 15. Now something is necessary to be added in respect of some variety of opinions touching the true diversity and signification of Bailment, Mainprife, Fideiuss. Surety, Pledges, Plevin, Plevina, Replevin, Borrough, and the like. And first of Bail.

• Some derive this word from the French word *Bailler*, id est, *Tradere*, to deliver, because the prisoner is delivered out of prison; but it cannot so be derived: for the entry is, *traditur in* or *per ballium*, and then the sense (or non-sense) should be, he is delivered into delivery. But this word *Ballium* is truly fetched from the French *Bon Bail*, that signifieth a *Guardian*, *Keeper* or *Goaler*: a and herewith agreeth Bracton, who saith, *Non erit ulterius per ballium dimittendus*. And again, *Per ballium dimittatur usque adventum Justitiariorum*, alioquin remaneat in prisona: and in the same page, *tradas in ballium 12 probis hominibus*. We read not in Britton of this word *Bail*, but of some other words hereafter following. *Que plevissent corps de home ceux ne sont my proprement pledges mes sont mainpernors pur ceo que ilz supposent que ceux plevifable sont livers a eux per baile corps pur corps*.

\* There bailment is called a living prison.

b A man arrested or imprisoned (andailable) for felony shall be bailed before it appeareth whether he be guilty or no. But if a man be convicted by verdict or confession, &c. he is notailable, because it appeareth that he is guilty. So, if upon examination a man confesseth a felony, if the *Mittimus* be for felony confessed, he cannot be bailed.

c By Shard there is a diversity between *Bail* and *Mainprife*: for the entry of the bail is, that such an one *traditur in ballium*, in which case they be his *d Guardian*: and if they suffer him to escape, they shall answer for it.

e And where it is said there, *Et per quosdam ilz serra pende*, it was spoken but in \* *terrorem*, and thereupon a *Quere* is made of it. And that it was no felony in ancient time, hear what the *Mirror* saith. It is abusion to think that such pain should be awarded to the *Bail*, as to the *Principals* which made default, where they were but amerciable in that case.

f And where any man is delivered in *Balliu*, he may safely be kept by his *Bail* for their indemnity, because the Court of Justice doth deliver him unto them to be safely kept.

The manner of the several entries of the bail is worthy of observation, because it is only attained unto by observation of presidents, and the course of Courts.

And first in case of bailment for felony by the Common Law, those that do bail him are severally bound to the King by Recognisance in a certain sum, that the prisoners shall appear at a certain day, &c. *Et ultra quilibet eorum corpus pro corpore*, &c.

The bail of a felon before two Justices of the Peace, whereof one to be of the *Quorum* by the Statutes of 1 & 2 Ph. & Mar. & 2 & 3 Ph. & M. is for the felon in double, and for each of the bail in single. As for example, If the felon be 40 l. the bail is 20 l. a piece. And herein to observe in effect three things. 1. *Ad comparandum at the next Goal-delivery*. 2. *Ad standum recto de feloniam predictam*. 3. *Ad respondendum dicto Domino Regi*, &c. See the Second part of the Institutes, the Statutes of Marlebridge, ca. 27. if the party bailed *Propter privilegium Clericale respondere noluerit*, non amercientur illi quibus traditus in ballium. There must be also a *Liberate* in that case to the *Goaler*, if the felon be formerly committed to prison, to deliver him out of prison.

Before



Before the said Statutes of 3 E. 1. c. 15. 27 E. 1. c. 3. and 1 & 2 Ph. & M. cap. 13. If any person had been let to bail that was notailable: by Law this amounteth to a negligent escape, and shall be punished as a negligent escape of a felon shall be, that is, to be fined at 5 l. But by the Statute of 1 & 2 Ph. & Mar. the Justices of Gaol-delivery shall in that case set what fine upon the Justices of Peace, &c. they shall think fit. Upon a Capias, and a Capi corpus returned, the entry is traditur in ballium 8 die Maii Anno 16 Regis H. 8. Jo. Long, &c. usq<sup>ue</sup> die Mercurii prox<sup>imo</sup> futur<sup>o</sup>, & sic de die in diem, & termino in terminum, quousq<sup>ue</sup> placitum prædictum terminetur, viz. quilibet eorum corpus pro corpore.

If A. be in custodia Marechal<sup>is</sup> in the Kings Bench, & a Bill of debt be brought against him; and the defendant find B. for his bail, B. entereth a Recognisance to the plaintiff with this condition precedent, Quod si contigerit prædict<sup>o</sup> defendentem debitor<sup>em</sup> & damna illa præfata querenti minime solvere, aut se prisonæ Marechalli ea occasione non reddere, that then he would satisfie the same.

Nota, In these personal actions the bail is only bound, and their Recognisance is general, and of no certain sum, as it is in case of felony: and against him that is by bail in the Kings Bench, any stranger in the same Term may sue him by Bill in any personal action; otherwise it is if he were by Mainprize de die in diem. But if A. be outlawed in any personal action, and taken by force of a Capias Uelegatum, and plead any plea triable by the Country in avoidance of the Outlawry, as that he was commorant in another County, &c. In this case A. shall be bailed, and the entry is, Super hoc, T. B. & B. P. manuceperunt præfata. A. habendum corpus ejus hic, &c. & sic de die in diem in quemlibet diem placiti, quousq<sup>ue</sup> placitum prædictum terminetur, & judicium inde redditum fuerit, viz. quilibet eorum corpus pro corpore: Et prædictus A. assumpsit pro seipso essendi tunc hic ad quemlibet diem placiti prædicti sub pœna 40 l. &c. si contingat ipsum A. ad aliquem diem, &c. defaultam facere, aut sectam suam in hac parte non prosecui. Note, wheresoever the principal is bound, it is in a certain sum.

And where some do hold, that in all cases when any Statute enacteth that the body of the Delinquent shall be committed to prison at the will of the King, he cannot be let to Mainprize before the Kings will be known; The Rule is good if it be rightly understood; for he cannot in that case by force of any such Statute be imprisoned, before he be indicted, convicted, and judgment given, and then he cannot be bailed or letten to mainprize, because his offence appeareth, as hath been said.

And the case there cited in 24 E. 3. upon the Statute of 2 E. 3. c. 3. for going armed in Westm. Hall, &c. the Book saith, That Thomas Figgot Chivaler fuit arraine per Shard, &c. which proveth that he was indicted, arraigned, and legally proceeded with, neither was his armor forfeited before conviction. And note, That the said Act in that case giveth the forfeiture of his armor, and imprisonment: and therefore in that case he shall not be fined: but Sir Thomas Figgot might have been bailed before conviction.

In the next place we are to speak of Mainprize, Manuceptio, which deriveth it self, and signifieth a taking into the hand.

Every bail is mainprize, (for those that are bail take the person bailed into their hands and custody) but every mainprize is not a bail, because no man is bailed but he that is arrested, or in prison: for he that is not in custody or prison cannot be delivered out, as before it appeareth. But a man may be mainprized which never was in prison, and therefore mainprize is more large then bail. As in an Appeal of felony, the defendant wage battel, &c. and a day appointed, &c. the plaintiff shall find mainprize, &c. to appear, &c. And yet he never was in prison or under custody. And sometime these mainperners are called pledges. Also if A. be in execution for debt, &c. at the suit of T. and sueth a Scire fac<sup>ere</sup> upon a release or the like, the Entry is, Et super hoc prædictus A. dimittitur per manucept<sup>um</sup> E. D. E. F. qui cum manuceperunt, ad habendum corpus ejus hic ad præfatum terminum, & sic de die in diem, &c. quousque inde judicium redditum fuerit. Et si pro prædict<sup>o</sup> T. transierit, exequatur, viz. quilibet sub pœna 40 l. quas quilibet

25 E. 3. 39. 3 E. 3. tit. cor. 40 Aff. 42. 3 E. 1. c. 15. 27 E. 1. stat. de finibus, cap. 3.

Hil. 18 H. 8. Bendl. This bail is determined by the judgment, if the principal be there.

21 H. 7. 40. b.

9 E. 4. 2. a. See before cap. of the Kings Bench.

Here the Bail are bound in no sum but corpus pro corpore, the principal in a certain sum.

Stanf. pl. cor. 77. b.

24 E. 3. 33. Sir Th. Figgots case.

¶ Of mainprize.

17 E. 3. 82. 17 Aff. p. 1. 5 E. 3. 21. 32 E. 3. Mainprize 23. \* 9 H. 4. 3. 1 H. 6. 6. 30 E. 3. 20. 26 E. 3. 12. 11 H. 4. 43. 12 R. 2. consilium 37. 8 H. 5. 30.



quilibet recognovit, &c. ad opus ipsius T. levare, &c. si contigerit ipsum A. ad aliquem diem placiti defaultum facere, seu idem placitum cum effectu minime prosequi, vel se ab executione iudicii, si pro præd' T. reddatur versus ipsum A. faciend. retrahere, &c. And this is properly in the Entry said, by mainprize, and no bail, because it is for the plaintiff in the Scire fac' who was in execution. Now for as much as every bail is a mainprize (as hath been said) bail is oftentimes termed in our Books by the name of mainprize as before it hath partly appeared, and as it appeareth in the \* Writ De Manucaptione. 38 E.3. fol. 14. 11 H.6. 31. 50 E. 3. 11. 1 H.7. 1. And in divers Acts of Parliament, Acton Burnel 11 E.1. 4 E.3. cap. 2. 23 H.6. cap. 10. 1 & 2 Ph. & Mar. cap. 13.

Lastly, a There is a manifest diversity between De die in diem, and a bail: for he that is by mainprize De die in diem no Will can be maintainable against him: otherwise it is against him that is by bail per cursum Curie.

Plegii and Plegiatio are derived of the French word Plegie, which signifieth one that undertaketh for another, a surety, fidei jussor. Now as every bail is a mainprize, so every bail and mainprize is ex vi termini plegiatio: which see in Glanville for the Act of Suretiship. But in legal understanding it is taken, first for the pledges which the demandant or plaintiff find in such Writs as begin Si A. (i. querens) fecerit te securum de clamore suo prosequendo, &c. And these are called plegii de prosequendo, and the reason of these were, for the answering of the King of the Amerciament if the demandant or plaintiff were barred or nonsuit, &c. so cautious were the founders of our Law, that the King should ever be answered of such duties as belonged to him: but the Writ of the b King, Queen or of an Infant, shall not comprehend that Clause, si fecerit te securum, &c. because they shall not in those cases be amerced. But it is observable, that the tenant or defendant shall find no pledges: and yet if judgment be given against him he shall be amerced, &c. for \* melior est conditio possidentis & rei, quã actoris.

c Pledges may be found in the Chancery, or may be entered at any time hanging Writ or Will by the discretion of the Justices, upon gaging deliberance by the avowant he shall find pledges de liberatione illa facienda.

d There be also plegii de retorno habendo by the Statute of W.2. Of Pledges come Plevin, Replevin, Replegiari, &c. See the Statute of Marlebridge, cap. 27. that traditus in ballium, replegiatus, & per plegios is all one and synonyma.

e When the defendant cometh in by Cap. or Exigent, he shall not find pledges but mainprize.

f He that sueth by Will shall find pledges De prosequendo in fine billæ, which have been controverted in books.

g We have hitherto spoken of pledges in a judicial course. g There be also voluntary pledges, as you may read in Fleta. lib. 2. c. 5. 32 E.3. Monstrans des faitz. 179. 42 E.3. 11. 44 E.3. 21. 48 E.3. 20. 22 Eliz. Dier 270. F.N.B. 137. c.

Surety comprehendeth all the former. And note, there is a surety by the Common Law, and surety by Statute. By the Common Law, b as in a Writ De securitate inveniendâ ne exeat regnum, &c. There is surety of the peace, and surety of the good behavior de bono gestu. The surety of the peace cannot be broken without some act, as an Affray, or Battery, or the like. But the surety De bono gestu consisteth chiefly, that a man demean himself well in his peace and company, doing nothing that may be cause of the breach of the peace, or of putting of the people in fear or trouble; and that it doth not consist in observation of things that concern not the peace, as in not well doing his art or occupation. Thus far is the authority of the Book in 2 H.7. by the resolution of all the Justices assembled for that purpose. But in mine opinion, the Reporter made se gessit in the last words of the case.

At a general Sessions holden at Bridgewater in the County of Sommerfet, Anno 28 Eliz. one Will. King with sureties was bound by recognisance to appear at the next general Sessions of the Peace in the same County. Et quod interim se bene gereret erga dictam Dominam Reginam, & cunctum populum suum. And after at the next Sessions, William King appeared and was indicted for

landerou

\* Register. F.N.B. 249. 250. Bract. lib. 3. 154.

a 33 E.3. mainprize 11. 36 E.3. ib. 13. 1 R.2. tit. bill 9. 9 E.4. 12. 7 H.8. 4. 31 H.6. 10. 32 H.6. 4. 39 H.6. 37. 21 H.7. 33. a. Vid. 4 H.6. 8. per Cokeine.

¶ Of Pledges. Glanvil li. 10. c. 5. Stat. de offic. cor. 4 E.1. Plegii de prosequendo. b F.N.B. 31. f. & 195. h. 17 E.3. 75. b Lib. 8. 6. & 1. 5 49. a Bract. l. 4. f. 254. a.

\* Regula. c Regist. 288. F.N.B. 19. 18 E.4. 9.

d Vid. 2 H.6. f. 15. 2 part of the Inst. W.2. cap. 2. e 31 E.3. mainprize 21.

42 E.3. 7. acc. f 12 El. Dier 288. 20 E.3. pledges 11 9 E.4. 27. 2 H.4. 17 18 E.4. 9. 2 H.7. 1. 17 g See Mag. Carr. cap. 8. 2 part of the Institutes.

¶ Surety, Securitas. h Regist. F.N.B. 85. See the third part of the Inst. cap. Fugitives.

i 2 H.7. fol. 2. 13 H.7. fol. 10. b. k 13 H.7. fol. 10. b. 1 H.7. 8. per Finieux & Trem. These words are well explained. Hil. 30 Eliz. coram Rege infra.

l Hil. 30 Eliz. coram Rege.



landerous words spoken since his binding, viz. for saying at one time to Edw. Kyrton Esq; Thou art a Pelter, thou art a liar, and hast told my Lord lies, and I will make thee a poor

\* And he was further indicted, that since the said Recognisance, Clausum cuiusdam Johannis Wich, vi & armis fregit & intravit & averia & catalla ipsius Johannis in clausu prædicto depascent' illicite vexavit & chasnavit. And afterwards at another time he said to the said Kyrton, Thou art a drunken Knave: which Indictment was removed into the Kings Bench. And hereupon two questions were debated divers times both at the Bar and the Bench. First, admitting that all that is contained in the Indictment be true, whether any therein was in judgment of Law a breach of the said Recognisance. The second, for how much the said indictment was good in Law. As to the first, it was resolved, that neither any of the words, nor the trespasss, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace, for though the said words (especially thou art a liar, &c. thou art a drunken Knave) are motives and mediate provocations for breach of the peace, yet tend they not immediately to the breach of the peace; as if William King had challenged Kyrton, or sent him a Challenge to fight with him, or had threatened Kyrton to beat or wound him, or the like: these tend immediately to the breach of the peace, & therefore are breaches of the Recognisance of the good behaviour. And this diversity was justly collected upon the coherence and context of the Statute of 34 E. 3. whereby Justices of Peace are assigned for keeping of the Peace, and to restrain the Offenders, Rioters, & all other Barratores, and to chastise them according to their trespasss and offence; and to enquire of Pillors and Robbers, in the parts beyond the Seas, and be now come again, and go wandring and will not labour, &c. (And thus much for punishment of offences against the peace after they be done: now followeth an express authority given to the Justices, for prevention of such offences before they be done.) viz. \* And to take of all them that be not of good fame, (that is, that be defamed and justly suspected that they intend to break the peace,) where they shall be found sufficient surety and mainprise of their good behaviour towards the King and his people (which must concern the Kings peace, as is also provided by the word subsequent) to the intent that the people be not by such Risors troubled nor indamaged, nor the peace blemished, nor Merchants nor other passing by the Highways, disturbed, nor put in the peril that may happen of such offenders. For the trespasss, &c. Although every wrongful trespass is quare vi & armis & contra pacem, yet these force and arms, or contra pacem implied in Law are not taken to be such as shall make a breach of the good behaviour; because they are trespasss upon the land, or touching goods or chattels, and not the person of a man.

34 E. 3. cap. 2.

\* This was the first Statute that gave this express authority to Justices of Peace.

As to the second point it was holden, that the Indictment concerning the words was void and coram non iudice, and good only for the trespasss, quare clausum, &c. But if there be any just cause of breach, he ought to have a Scire fac' upon the Recognisance.

In an Account, if a Capias ad computand' be awarded against the defendant, and thereupon he is outlawed, and rendzeth himself to the prison of the Fleet, and Auditors be assigned to him, before whom they be at issue, and the Auditors bring the Record into the Common Pleas, and the defendant found surety in 200 li. to appear in proper person every day pendente placito; and if the issue palls against him, that he rendzeth himself to prison.

21 H. 6. 26.

a A fine sur cognisance de droit was levied to an Infant, and because the Infant ought to pay the fine to the King, he found securitatem de fine solvendo.

45 E. 3. Surety 24  
Reguler 291. b.  
Nota.

F. N. B. 79 g.  
2 H. 7. 1. 3. & c.  
36 H. 6. 23.

There is also a Writ De securitate pacis, & de bene gerendo.

3 H. 1. 9.  
6 E. 4. 8.  
12 E. 4. 2.  
5 H. 7. 3. d.  
13 H. 7. 17. a.

b In homine replegiando the defendant avow for that the plaintiff is his villain regardant. The plaintiff said that he is free, and thereupon they were at issue; the plaintiff prayed that he might gage deliverance. And it was awarded that he should have deliverance of his goods, and find no surety that the avowant should have the goods again if it were found for him. But note when the avowant be at issue upon the villenage, c then the plaintiff shall find surety to sue cum effectu.

3 H. 7. 3.

25 b

Surety



See F.N.B. 151.g.

Surety; By statutes: See the statute of W.1.cap.20. De malefactoribus in Parcis in the Second part of the Institutes in the exposition of the same; the statute of Gloc.cap.4. and W.2.cap.21. for finding of surety in a Cessavit. See also the Second part of the Institutes in the exposition thereof.

The statute of W.2.c.4. Et statut. de defensione Juris, An. 20 E.1. of finding of surety by tenant by Rescipe. See the Second part of the Institutes the exposition of the same. And many other whereof we need not to make mention; only this is observable, that when any statute doth require pledges or surety to be found, they ought to be sufficient, for insufficient pledges are no pledges in judgment of Law; and surety cannot be ex vi termini unless it be sufficient.

W.2.ca.29. Mag.  
Cart.cap.26.  
\* Reg.133,134.  
28 E.3. ca.9.  
Stanf Pl. Cor.77 g.  
See Hil.32 E.1.  
Coram rege Rot.  
71.& 79.  
Regist.268 b.  
F.N.B.250 a.  
B. act.li.3.f.154.  
28 E.3.ca.9.

It appeareth by W.2.cap.29. that the \* Writ De odio & atia concerning the bailment of prisoners is grounded upon Magna Carta. And it is holden by some, that Writ is not now in use, but is taken away by the statute of 28 E.3. But this Writ is revived again by the statute of 42 E.3. cap.1. whereby it is enacted that if any statute be made against Magna Carta, or Carta de Foresta, it is enacted to be void. See more of this matter in the Second part of the Institutes, Mag.Cart.cap.26. which were unnecessary here to be rehearsed. This Writ, De odio & atia is omitted by Fitzh. in his N. B. concerning the Writ De manucap-tione, one kind thereof directed to the Sheriff is a Writ grounded upon, and re-hearing the statute of W.1. cap.15. and how that before him by a certain in-quisition of office A. B. standeth indicted de quodam latrocinio cujusdam equi, &c. Now in as much, as by the statute of 28 E.3. he cannot take such in-quisitions by force of any Writ or Commission, therefore that Writ De manu-captione ceaseth. But the Writ of manucap-tione may be directed to other Justices, as to the Justices of the Foreest, Justices of Peace and to other: for the statute of 28 E.3. extends only to Sheriffs, and to Sheriffs only upon taking of inquisi-tions. But a Writ of manucap-tione may in other cases be directed to the Sheriff. Vide the statute of 4 E.3.cap.2. for the Court of the Marshalsea, F.N.B.251.

Regist. 80.a.  
Regist. 133.b.  
F.N.B.250. k.l.  
& 251.a.b.c.

Regist 79.  
F.N.B.250. d.f.i.  
See Brañ.li.3.  
121.154. Fleta  
li.2.ca.2.

For the Writ of homine replegiand', see the Register fo. 133. F.N.B. 66.E. Hil. 43 E. 3. Eoram rege Rot. 110. Suffex. Mich. 5 H. 4. Rot. 26. Devon' per breve Regis in duobus Com' William Scuttes case. 11 H.4.15. F.N.B. 68.c. Cap. in Withernam.

Brañ.li.3.fo.145.  
Britton fo.49.  
Fleta li.1.ca.40.  
Mirror ca.2.§.11.  
la appeal de impri-  
sonment.

So odious was unjust imprisonment, or unjust detaining of any Freeman in prison, as in ancient time there lay a Writ De pace & imprisonamento, &c. ubi liber homo, &c. uno modo propter injustam captionem, & alio modo propter injustam detentionem, &c. And there you may read the form of the Writ of Appeal, De pace & imprisonamento, which we have the rather remembred, that it may be observed what several remedies the Law hath allowed for the relief and ease of the poor prisoner. But the readiest way of all is by Habeas Corpus in the Term time, or in the Vacation out of the Chancery, as you may read at large in the Second part of the Institutes, Mag.Cart.ca.29. and statut. de Gloc. c.9. and the Exposition upon the same.

34 H.8.c.p.14.  
This is expoun-  
ded to be reddendo  
singula singulis res-  
pectiv.  
Vide 8 E.4.18.  
a Vid. Dier 8 El.  
253.254. upon a-  
nother branch of  
this Act.  
b 14 H.7.20. per  
Keele Br. Judg. 8.  
to be understood  
of the Kingsbench  
14 H.7.15.b. Per  
Mordaunt.

The Clerk of the Crown, Clerk of the Peace, and Clerks of Assise shall cer-tifie briefly a transcript of such Attainder, Outlawry or conviction as is had for any kind of felony before Justices of Oier & Terminer, Justices of Gaol-delivery, and Justices of Peace before the King in his Bench, there to be and remain of Record, &c. See the statute, a very necessary Law for the plea of auterfoitz attaint or convict for ousting of Clergy, &c. and for escheats and forfeitures to the King.

b For the better understanding of this Act of Parliament, it is to be under- stood, that such Attainders of Outlawry and convictions of felony before any of the Justices named in this Act, as are certified, or delivered into the Kings Bench, are under the custody of the Clerk of the Crown of that Court, and for that cause he is named in this Act.

See the statute of 9 E.3. cap.5. by which it is ordained and established, that Justices of Assise, Gaol-delivery, and of Oier and Terminer, shall send all their records and processes determined, and put in execution to the Exchequer at Mich. every year once to be delivered there, and the Treasurer and Chamberlains, &c. shall

shall keep them in the treasury as the manner is, so that the Justices always do first take out the extracts of the said records and processes against them to send to the Exchequer, as they were wont before.

By the Statute of 11 H. 4. ca. 3. Justices assigned (id est, Justices of Assize) shall cause to be delivered into the Kings treasury all the Records of Assizes, Ordinance, and of certifications before them determined every second year.

All Indictments and Presentments in the Sheriffs Turn, or law days shall be delivered to the Justices of Peace of the same County, at their next Sessions of peace to award process, &c.

After the murder or manslaughter found before the Coroners they shall deliver their inquisitions aforesaid to the Justices of the next Gaol-delivery.

If any person be murdered in the day, and the murderer escape untaken, the Township shall be amerced, and the Coroner hath power to enquire thereof upon view of the body, and the Justices of Peace have power to enquire of such escapes, and to certify aforesaid the King in his Bench.

And (that we may say somewhat of every thing) Forasmuch as the charge to be given at the Sessions of the peace consisteth on two parts, Laws Ecclesiastical for the peace of the Church, and Laws Civil or Temporal for the peace of the Land, it shall be very fit to lay, as a foundation of the charge, that excellent Law established by Authority of Parliament, which we have translated into Latin. *Imprimis Rex vult, & præcipit quod Pax Sacrosanctæ Ecclesiæ, & terræ solide custodiatur & conservetur in omnibus, quodque Justitia singulis, tam pauperibus, quam divitibus administretur, nulla habita personarum ratione.*

First of all, the King willeth and commandeth that the peace of holy Church and of the Land be well kept and maintained in all points, and that common right (i. Justice) be done to all, as well poor as rich, without respect of persons.

Whereupon the charge to consist upon two parts. 1. Of Laws Ecclesiastical, and 2. Of Laws Civil or Temporal, with an exhortation to do Justice.

Or another Axiome or Principle of the Law may be the foundation of the charge. *Imprimis interest reipublicæ, ut pax in regno conservetur, & quæcunque paci adversentur provide declinentur.*

It is most necessary in a Commonwealth to provide, that tranquillity and peace be continued in the Realm, and that all things being contrary thereunto may by foresight be eschewed.

\* Or that of 32 H. 8. There is nothing within this Realm that conserveth the subjects in more quietness, rest, peace, and good concord, then the due administration of his Laws.

Or the like, see the Third part of the Institutes, in Epilogo.

11 H. 4. cap. 3.  
13 H. 4. error 91

3 E. 4. cap. 3.  
Vid. 4 E. 4. 1. 31.  
8 E. 4. fo. 5.

3 H. 7. ca. 1.  
Lib. Intr. Rast. 43.

3 H. 7. ca. 1.

W. 1. An. 3. E. 1.  
cap. 1.

Pax { Ecclesiæ.  
Terræ.  
Justitia pacis mater & nutrix.

1 Mar. cap. 12.  
3 & 4 E. 6. ca. 5.  
Though the Body of these Acts be repealed, yet the Axiome rehearsed in the Preamble shall continue for ever.

\* 32 H. 8. cap. 9.



## CAP. XXXII.

*A Court of Inquiry of the defaults of the Justices of Peace, Justices of Assise, Sheriffs, and Under-Sheriffs, touching the execution of the Statute of 13 H. 4. ca. 7. concerning Riots, Assemblies and Routs.*

2 H. 5. cap. 8.  
See 19 H. 7. c. 13.

**T**his Court is raised by the Statute of 2 H. 5. and is a Court only of Inquiry, and to certify the inquests incontinent into the Chancery, as by the said Statute more at large appeareth.

## CAP. XXXIII.

*Justices in Eyre.*

See the 2 part of  
the Inst. W. 1.  
cap. 27.  
Bracton lib. 3.  
fo. 116.  
Britton fo. 1.  
2 E. 3. fo. 27.  
Kelw. fo. 143.

**T**hey were originally instituted for the good rule of the Subjects, and for the ease of the Countries, and that such as had Franchises might claim them.

They were called Justiciarii in Itinere, or Itinerantes, in respect of other Justices that were residentes. In the black book in the Exchequer, cap. 8. they are called Justiciarii deambulantes, & perlustrantes. *Sæ* Vet. Mag. Cart. 2 part fo. 72. Artic<sup>9</sup> & sacramenta in Itinere.

Their Authority was by the Kings Writ in nature of a Commission, they had Jurisdiction of all Pleas of the Crown, and of all Actions real, personal, and mixt: they rood from seven years to seven years (but now by the statute of 27 H. 8. ca. 24. all Justices in Eyre must be by Letters Patents under the Great Seal) In what County soever they came, all other Courts during the Eyre ceased, and all those pleas in that County, or rising there before any other, the Justices in Eyre might proceed upon as the others might have done. For example: A Writ was directed to the Justices of the Common Pleas to adjourn, and send all the pleas of that County which were in the Court of Common Pleas before the Justices in Eyre to be determined before them, &c. And if judgment had been within that County, the Justices in Eyre might award execution without a Scire fac<sup>9</sup>. *Sæ* the First part of the Institutes, Sect. 514. and read the ancient books and other Authorities there quoted for their Antiquity and Jurisdiction, and the causes wherefore they vanished away. But the other Justices of Eyre, viz. of the Forrest, continue to this day according to their original institution. *Sæ* the Chapter of the Court of the Forrest. *Sæ* also the Second part of the Institutes, Marlbridge 24, 25, 27. W. 1. cap. 18. & W. 2. cap. 10. and the Exposition of every of them.

What Franchises and Liberties ought to be claimed before Justices in Eyre, *sæ* lib. 9. fol. 24. the case of the Abbot of Strata Marcella.

The stile of their Court was, Placita de Juratis & Alsis & Coron. de Itinere Johannis de Vallibus & sociorum Justic<sup>9</sup> Itiner<sup>9</sup> apud Ockham in com<sup>9</sup> Rutland in crastino Epiphaniæ Domini, Anno regni Regis Edw. 14.

These Justices in Eyre did hold their Courts, as hath been said, from seven years

Regist.  
F. N. B. 243. k.  
14 H. 7. 29.  
15 H. 7. 5.

years to seven years, and first they began with Pleas of the Crown, for saith Bracton. Imprimis incipere debent de Placitis Coronæ, in quibus terminantur actiones criminales tam majores quam minores. And one could not be indicted for any thing, concerning the Pleas of the Crown, done before the last Eire: for so it appeareth by Bracton, Non erit querendum de Placitis illis Coronæ quæ emerferunt ante aliud iter Justiciariorum, & quæ coram eis proposita non fuerunt. And by Fleta, Ex capitulis de veteribus Placitis Coronæ alias præsentatis & nondum terminatis, solet exceptio quibusdam indictatis oriri, quod de novo indictmento de fact' ante ultimum iter imposito non tenetur respondere; & si non sit allocabilis, sequitur quod Juratores hundredi puniendi sunt de conclamento, vel de perjurio convincendi.

Bract. lib. 3. c. 115.  
b. 116. b.  
Fleta li. 2. cap. 29.  
vers. finem.

Vid. postea. Ca. 60.  
of Pipowders.

And it were to be wished that in criminal causes at the Kings suit, there were a limitation of time, especially in cases concerning the life of man. The Common Law in appeals at the suit of the party hath in those cases limited a time, viz. that they must be brought within the year and the day after the offence committed: and the reason thereof was, that the cause might be tried, whilst it was fresh in memory, and that such as could testify were living.

Vid. Hil. 15 E. 1. in Banco Rot. 56. they could adjourn into another County.

The Justices in Eire might inquire of the deeds of Justices of Gaol-delivery. Bracton saith, Et si post intervallum accusare velit, non erit de jure audiendus, nisi docere potest se fuisse justis rationibus impeditum. And Bracton also saith, that after the charge given the Justices in Eire, debent transferre se in locum secretum, & convocatis ad se quatuor, vel sex, vel pluribus de majoribus de com' qui dicuntur \* Busones com' ad quorum nutum dependent vota aliorum qualiter à Dño Rege & consilio suo sit provisum, quod omnes tam milites quam alii qui sunt a 15 annorum & amplius jurare debent, &c.

Rot. Par. 23 E. 1.  
Rot. 6.

\* Busones sive Busones, of the French word *Bourlon*: for as it is in the proverb, He that beareth the purse ruleth the roast.

leth the roast, which agreeth with Bractons description here, *Ad quorum nutum dependent vota aliorum*. So vulgarly called, which also Bracton insinuateth, when he saith, *Qui dicuntur busones*. a It is misprinted, and should be 12 annorum 2 for 5. See the 2. part of the Inst. Mag. Car. cap. 7. & 35.

So great was the authority of Justices in Eire, that if they came into the County where the Justices of the Court of Common Pleas sat, the jurisdiction of that Court during the Eire ceased, but they yielded to the Kings Bench.

See Cap. Itineris, Vet. Mag. Cart. part. 1. fol. 150, 151. &c.

See Hovenden, Anno Dñi. 1176. Vid. Hil. 13 R. 2. pl. 2. Of proceedings before them.

Rex Justiciariis suis prox' Itinerantibus, in com. N. Salutem. Quia per \* commune concilium Regni nostri Angliæ provisum est, quod quilibet liber homo libere possit facere Attornatum ad libertates suas vendicandas, exigendas, prosequendas, & defendendas; Vobis mandamus, quod Attornat' quem A. per Literas suas Patentes suo loco attornare voluerit, ad libertates suas vendicandas, exigendas, prosequendas, & defendendas coram vobis in Itinere vestro in com' prædicto, loco ipsius A. sine difficultate ad hoc recipiatis, &c.

Br. Jurisd. 116.  
27 Ail. 1. F. N. B.  
Fleta li. 1. cap. 10.  
§. Ex capitulis  
vers. finem.

Registr. 19. b.  
\* V. R. W. 2. c. 10.  
Nota, The Register is a good exposition of this Statute.  
See the 2. part of the Inst. W. 2. c. 10.

See also another Writ in the Register, Ubi supra, De clamore admittend' in Itinere, &c.



## CAP. XXXIV.

*The Court of Justices of Trailbaston.*

**T**hese Justices late by force of the Kings Commission of Oier and Terminer grounded, as some hold, upon an Ordinance made by King E. 1. and the Lords at a Parliament holden in Anno 33 E. 1. for the hasty proceeding. And therefore they were called Justices of Trailbaston, because they proceeded as speedily as one might draw, or trail a staff, they say upon the said Ordinance in the same year, viz. 33 E. 1. a Commission of Oier and Terminer Vocat' Trailbaston secundum ordinationem inde fact' in Parlamento de Anno 33 E. 1. By this it appeareth, as some have conceived, that this Commission was builded upon an Ordinance in Parliament, and not upon an Act of Parliament.

33 E. 1. in Dorf.  
Pat. parte 1.

Ver. Mag. Cart.  
2 part. fol. 28.

Others say that this Commission was grounded upon an Act of Parliament in Anno 33 E. 1. intituled Statutum quod vocatur Ragman de Justiciariis assignatis. See the Statute, and that the Ordinance mentioned in the Commission of 33 E. 1. is the Statute Ragman, Statutes being often called by the name of Ordinances, for every Statute is an Ordinance, sed non è converso.

But let us now consider what light our books have given us, the Statute being somewhat obscure and dark.

2 E. 3. fol. 27.

In Trin. 2 E. 3. we read this case. William de B. sued a Writ of Error returnable in the Kings Bench upon a judgment given in a plea of land at the suit of John Hodey, which was pleaded by bill before Justices of Trailbaston, where because the Justices of Trailbaston did send only the record of the plea, they were commanded to send the transcript of their Commission, and the bill also with the pannel, the which they did, and again the record also. In which case you may observe these Five Conclusions. First, It was assigned for error, that John Hodey made his plaint of certain land against William de B. being present in Court before the Justices of Trailbaston, and he was put to answer without making of process against him, and therefore they erred in receiving the plea without process, &c. sed non allocatur. Secondly, For the Justices of Trailbaston be in their case as Justices in Cire; and in Cire when the party puts in his bill against another which is present in Court, the Justices in Cire ought to receive it. Thirdly, Another error was assigned, that it appeared by the record, that presently the Justices of Trailbaston took an inquest de circumstantibus, which came not in by process to give their verdict, and also it appeared by the record, that the Twelve gave their verdict, super sacramentum suum, without saying de consensu partium; sed non allocatur. For in Trailbaston and in Cire certain men are made to come by whom those Justices do inquire ex officio, that is, without process whereunto the parties which have pleaded to issue agree to be tried by them, the Court erreth not if they take an Enquest of them, and it is not found of record, that William de B. did dissent: and as to the other point, the Court shall intend an assent where there appeareth no dissent. Fourthly, The errors assigned being no errors, the Court did search for errors, and to affirm the judgment or to reverse it. And the Court did find in the first record which was sent, that William de B. dicat quod in nullo est inde culpabilis, & de hoc ponit se super patriam, where John de Hodey which was Plaintiff did not joyn with him, & prædictus querens similiter

similiter, which joyning was in the second record certified; but for that, that record came in without warrant, and the first record certified is the record in Law, thereupon the former judgment was reversed. Fifthly, that no error was assigned, that the Justices of Trailbaston had no lawful jurisdiction, but a Writ of Error brought upon their Judgment, whereby, and by all the covert of this case their jurisdiction was affirmed, the Judges of the Kings Bench having, as is aforesaid, a Transcript of their Commission. Also they had jurisdiction in case of indictment of death, and so allowed, but Appeals of felony were excepted in the said Statute. 2 E. 3. 28.

Vide Dors. Pat. Anno 14 E. 3. part 3. m. 8. & 2. A Commission of Trailbaston was granted to Robert Parning Treasurer and others in London, Middlesex and Surrey, and like Commissions were granted in other Counties. 14 E. 3.

A Petition was exhibited by the Commons in full Parliament, who prayed that no manner of Cir or Trailbaston might be holden during the wars, or 20 years, &c. but it was not granted. Rot. Parl. 1 R. 2. 101.

But Præcipitatio est Noverca Justitiæ : and both in respect of the precipitation and of some reference to the next Parliament by the Statute of Ragman, this Commission wholly long since vanished, and is left out of the Register as not to be put in execution. But the Commission of Dier and Terminer there remaineth as necessary and useful for the punishment of horrible and enormous offences. See before the Chapter of Dier and Terminer.



## C A P. XXXV.

*The Court of Wards and Liveries raised by Authority of Parliament.*

The Statute of  
32 H. 8. cap. 46.

¶ The Court of the  
Kings Wards.

A Court of Re-  
cord.

By the Statute of  
33 H. 8. cap. 22.  
the office of the  
Liveries is annex-  
ed to the Court of  
Wards. So as now  
it is in the Court  
of Wards and Li-  
veries.

See the first part  
of the Institutes.  
Sect. 441.

All Wards, Man-  
nors, Lands, &c.  
In the order, sur-  
vey, &c.

**F**irst, the King our said Sovereign Lord by authority afore said, Ordaineth, maketh, establisheth, and erecteth a certain Court commonly to be called for ever *The Court of the Kings Wards*: which Court by authority afore said continually and for ever shall be a Court of Record, and shall have one Seal to be graven and made after such form, fashion, and manner, as shall be appointed by the Kings Highness, and shall remain and be ordered, as hereafter shall be declared.

Also be it enacted by authority afore said, that all Wards which the Kings Highness now is, or hereafter shall be intituled to have, with their Manors, Lands, Tenements, Rents, Remainders, Reversions, Services, and all other Hereditaments whatsoever they be, as well in possession as reversion, and all Revenues, Issues, and Profits of the same, and every part thereof, for the time the same shall be, or ought to be in the Kings possession, shall be in the order, survey, and governance of the said Court, and the Ministers of the same, in manner and form, as by this Act is declared and limited.

Also that the said Master of the Wards for the time being shall have full power and authority to award under the Seal to be appointed to the said Court in the Kings name such Process and Precepts with reasonable pains to be therein limited, as be now commonly used in the Kings Court of the Duchy Chamber of *Lancaster* being at *Westm.* against every person or persons whatsoever they be, for and concerning the interest, right and title of the Kings Majesty, his Heirs and Successors, of, in or for any Wards, Lands, Tenements, Rents, Account, Receipt, Services, or other cause in any wise touching or concerning any thing appointed by the order of the said Court, or any part thereof, for and on the behalf of our said Sovereign Lord the King, or to or for any debt, rising and growing by occasion of the same.

Also be it enacted by the authority afore said, that the said Attorney, Receiver General, and Auditors shall diligently from time to time attend upon the said Maister in the said Court for the hearing and ordering of matters and causes in the same Court for the time of four Terms in the year usually kept for the Law at *Westm.* and procure with all diligence, that all rents, fermes, profits, casualties, improvements, and other emoluments of the Wards marriages, Ideots, and all Mannors, Lands, Tenements, and Hereditaments, being in the survey and governance of the said Court, shall be truly and justly paid, and answered to the said Receiver General of the said Court to the use of the Kings Highness without concealing any part thereof. And shall also cause and procure Process to be made against such as shall be indebted

to

Process.

Duchy Chamber.

In any wise touch-  
ing or concerning,  
&c.

Debt.

Attend.

By the said Act of  
33 H. 8. the Sur-  
veyor is added,  
and to take place  
before the Attor-  
ney.

Indebted.

to the Kings Highness and their sureties of and for any part thereof from time to time, as the time and case shall require without any delay.

Also be it enacted by the Authority aforesaid, that all manner of Proces that shall be made out of the Kings Exchequer to or against any person or persons for any Farm, Rents, Issues or Profits concerning the premises or any part thereof, or any other thing limited in this Act to be in the survey, order, and governance of the said Court, and the Ministers thereof, shall be clearly void and of none effect to all intents and purposes.

No Proces out of the Exchequer for or concerning any Ward, &c.

Also be it enacted by the Authority aforesaid, that the said Master by the advice of the said Attorney, Receiver General, and Auditors, or three of them, whereof the said Master to be one of them, shall have authority by this Act to survey all the Kings Widows, and to treat, commune, and conclude as well with all and every of the Kings Widows that now be, or hereafter shall be, and that have married themselves without the Kings Licence, or that hereafter shall happen to marry themselves without the Kings Licence, for their reasonable fines to be made to the Kings use, and to tax and assess the same by their discretion according to the Statute of *Prærogativa Regis*: the same fines to be paid to the Receiver General of the Wards Lands, as the same may appear yearly in his account.

Widowes.

Also be it enacted by the Authority aforesaid, that the said Master by the advice of the said Attorney, Receiver General and Auditors, or three of them, shall have Authority by this Act to survey, govern and order all and singular Ideots and natural Fools now being in the Kings hands, or that hereafter shall come and be in the Kings hands. And also to survey and order all the Mannors, Lands, Tenements, and other Hereditaments whatsoever, now being in the Kings hands, or in the hands of any other person or persons to their uses, or to the use of any of them, that hereafter shall come and be in the Kings hands, his Heirs and Successors in the right of any of them by reason of his Graces Prerogative Royal: And also by the advice of the said Attorney, Receiver General, and Auditors, or three or two of them, to let and set, the Mannors, Lands, and Tenements to the Kings use for the time of the Kings interest for such rent and fine, as by their discretion shall be thought convenient; the finding and keeping of the said persons their Wives and Children, and the reparations of their houses and lands always to be considered in the doing thereof; the same rents and fines reserved to the Kings Grace to be paid always to the hands of the Receiver General of the Wards Lands for the time being, as the same may appear in his account, and be recorded in the Court of Wards.

Ideots.  
Natural Fools.

To let and set.

And also be it enacted by the authority aforesaid, that the said Master for the time being shall have power and authority to take Recognisances of all and every person and persons that shall be called into the Court of Wards and Liveries to answer to any matter alledged against them in the said Court, to make their daily appearance in the said Court, to answer to such matters as to them then and there from time to time shall be alledged. And that all such Recognisances of what sum soever they be, shall be as good and effectual in the Law to all

Called by Proces



To moderate Recognisances.

intents and purposes, as Recognisances taken in the Kings High Court of Chancery, or elsewhere before any Judge of Record within this Realm. And that the said Master for the time being with the advice of the Court, or of such member of the same as then shall be present, so that they be two beside the said Master, shall have full power and authority to moderate such Recognisances as be or shall be there forfeited, and to set fines for the same to the Kings use under the sums contained in the said Recognisances; the said fines to be levied by like Proces of *Scire facias*, as by the Statute made in the 27 year of our Sovereign Lord the Kings Reign, is given to the Chancellor of the Court of Augmentations of the Revenues of his Graces Crown. And that the said Master for the time being with the advice aforesaid shall have power and authority to commit to Ward any person or persons for his or their disobedience, contempt, or other offence made, or to be made triable within the Kings Court of the Wards and Liveries, and upon the said matters ordered or decreed there, to deliver them from prison, and to cancel and make void all Recognisances and Obligations taken or hereafter to be taken in the same Court to the Kings use when and as often as the said Master, with the advice of the said Court or three of them, shall see and perceive the matters and causes, for the which any such Recognisances or Obligations hath or hereafter shall happen to be taken, to be finished and ended, and the Kings Grace his Heirs and Successors, or the party thereupon satisfied, without any other warrant for the same.

¶ The Authority of the Courts of Exchequer, Wards and Duchy.

A clause of the statute of 33 H.8. ca.

39.

\* Assigned.

And also shall have full power and authority to hear and determine all and all manner of Debts, Detinues, Trespasses, Accounts, Reckonings, Wafts, Deceits, Negligences, Defaults, Contempts, Complaints, Riots, Quarrels, Suits, Strifes, Controversies, Forfeitures, Offences, and other things whatsoever they shall be, which shall hereafter grow, be moved, stirred, procured, pursued, or arise in, for, or upon any matter, cause, or other thing \* assigned, committed, or appointed to the several directions, orders, and governances of the same Courts, or any of them, or for or upon any manner of thing or things which may or shall touch or in any wise concern the same, wherein the King shall be only party. And also all manner of States for term of years between party and party concerning the premises, and to correct and punish by their discretions all and every person and persons which before them shall be convicted of any of the premises according to the nature, quality, or quantity of his or their offence or offences, cause or causes, matter or matters (all and all manner of Treasons, Murders, Felonies, Estates, Rights, Titles, and Interests as well of Inheritance as Freehold, other then Joyntures for term of life, only excepted and always foreprised.)

Before we descend to the several parts and branches of these Acts, it shall be expedient for advancement of truth to handle and clear two questions. First, when Wards became due to the Kings of England, by what title, and upon what reason. Secondly, who had the charge of the Kings Wards; how they were disposed of, and in what Court this Revenue was answered before the Reign of H.8.

The first contains three things, Time, Title, and Cause. And in all these three Polydor, and such as follow him do err: For Polydor saith that Henricus

3. Anno Domini 1219. qui avitum regnum civili bello, ac dissensionibus vastatum, opibus spoliatum, atque prope confectum paulo ante adeptus erat, cum rei domestica inopia pressus, non posset sine auxilio suorum, Asiaticum bellum juvare, vitamque regiam decenter degere, principes soluto prius tributo pro eo bello gerendo postea excogitato novo vectigalis genere, ut regem suum ea inopia levarent, a ultro concesserunt, ut quoties quispiam eorum, qui possessiones haberent b quarum Rex esset Dominus, ante moreretur quam liberi quos fecisset heredes vigesimum alterum agerent annum, tum eatenus tam ipse heres quam patrimonium in potestate atque tutela regis foret, & ille patrimonii hujusmodi proventus caperet, quoad heres ad eam aetatem perveniret: quia apud Anglos more majorum pervetusto conservandarum facultatum causa, filius mas natu grandior sit solus heres, vel filia si mares liberi nulli sint. Egit Rex gratias omnibus generatim pro munere, ac ut ne id humanitatis in oblivionem iret, deinceps istiusmodi nobilium heredum tutelam ut rem sibi valde utilem accuratissime suscepit. Sed illud beneficium nequaquam ipsi nobilitati postremo bono fuit, quando ceteri reges qui secuti sunt, non habita ratione, quod a principibus olim in Henricum duntaxat collocatum fuisset, ut qui pauper esset decentius personam regiam per illud sustineret, sibi etiam perpetuum vulerunt. Quid, quod ita res curam omnibus fuit, ut non modo reges, sed reliqui locorum domini in hereditates nobilium defunctorum eodem modo invaserint, id quod etiam nunc fit, & lege certa observatur. Unum istud institutum est tandem aliquando corrigendum, quippe quod quantum uni vel alteri commodi, tantum aliis incommodi affert: sane ita usu venit, ut populorum quibus hereditates veniunt tutela saepe a locorum dominis ad tempus sicut dictum est, illorum tutoribus per auctionem vendantur, quo sic facto lucro, ab ea educandorum puerorum cura vacui sint, & qui emunt, emunt autem tam nobiles, quam homines novi, si modo plus dederint, ea praesertim de causa redimant, ut pupillos nobilium suis liberis matrimonio jungant. Idque saepissime faciunt, antequam illi pubescant, quo simul vivendo, cum primum per aetatem liceat, urgente voluptatum titillatione invicem commisceantur, ut ne postea, cum adoleverint, jam mutui polluti nuptias repudiare queant, qui sic sese ab ineunte aetate libidinibus dedecorantes interdum non homines, sed ob virium infirmitatem plane homunciones gignunt a majoribus degenerantes. Atque nobilitas cum primis eo damnum facit longe ingentissimum quod homines humili loco nati per ejusmodi connubia sanguinem cum ea sociant, contaminantque indies singulos ejus vetustum genus, & pupilli ipsi a sinu matrum per emptionem erepti parum interdum honestis in aliena domo instituantur. Oritur vel hinc res alia indigna de qua nunc tacere libet, istorum enim conjugum gratia admodum modica aliquoties existit cum ante aetatem, & aliquando contra voluntatem nobiles feminae, virique plebeis copulati per raro inter se ament. Praetereo & illud, quantum patrimonia nobilium, causa hujusce tutelae lacerentur a novis possessoribus; qui suis avare commoditatibus servientes pecus omne non modo tondent, sed deglubunt egregie. Atque hoc est principum munus, quod regias opes maxime adauxit.

Polydor lib. 16. pag. 288.

Excogitato novo vectigalis genere. a Ultro concesserunt. b Quarum rex esset Dominus.

Herein Polydor hath erred in all three. For first, where he affirmeth for the time, that this Novum vectigalis genus was excogitatum, and granted to King Henry the third Anno Domini 1219. which was in the third year of his Reign, Glanvil who wrote in the Reign of H. 2. treateth of Wardships due to the King

Lib. 7. cap. 9. 101



And Ockham who wrote *tempore* H. 2. treateth also of Wardships and Liveries. and other Lords: to the King in these words. Notandum tamen quod si quis in capite tenere debet, tunc ejus custodia ad dominum regem plene pertinet, sive alios dominos habere debeat sive non, quia dominus Rex nullum potest habere parem, multo minus seniore, &c. And he treateth ubi supra of Wardships then due, (which holdeth Law till this day) and speaketh nothing of the beginning of them.

Marth. Paris, pag. 246.

King John in the seveniēth year of his Reign made a great Charter, and granted Concilio Baronum, quod cultos terræ hæredis qui infra ætatem fuer̃ non capiat de terra hæredis nisi rationabiles exitus, & rationabiles consuetudines, & rationabilia servitia, & hæc sine destructione & vasto hominum vel rerum. Et si nos commiserimus custodiam alicui talis terræ vicecomiti vel alicui alii, qui de exitibus terræ illius nobis debent respondere, & ille destructionem de custodia fecerit vel vastum, nos ab illo capiemus emendam, & terra committatur duobus legalibus & discretis hominibus de feodo illo, qui similiter nobis respondeant, sicut prædictum est. Custos autem quamdiu custodiam terræ habuerit, sustentet domos, parcos, vivaria, stagna, molendina, & cætera ad illam terram pertinentia de exitibus terræ ejusdem. Et reddat hæredi, cum ad plenam ætatem pervenerit, terram suam totam instauratam de carucis, & omnibus aliis rebus, ad minus secundum quod illa recepit.

1 part of the Institutes. Sect. 103.

Polydor saith, that this *Novum vestigale genus* was granted to the King.

1 part of the Inst. Sect. 1.

2. Where Polydor saith, Ulro concesserunt ut quoties &c. he affirmeth that it came from the grant of the subject to the King. The truth is, that all Tenures by Knights service, which since the Conquest draw ward and marriage (for relief was due before) were either created and reserved by the King, or before of 18 E. 1. Quia emptores terrarum by the subjects of the Realm. If by the King, it is either of the person of the King, ut de corona, which we call in Capite, or of some Honour or Mannor. If by a subject, either of his person or of an Honour or Mannor. And all these tenures have been created according to this rule, Cujus est dare, ejus est disponere. And all the Lands in England originally moved from the King, and are holden of him mediately or immediately.

Britton fo. 162. b. Lib. Rub.

The Charter of King Kenulphus Anno Dom. 821. The like Charter of King Ethelred to a Knight called Athelwig, Anno Dom. 995.

3. We utterly mistaketh the end of the creation of these tenures by Knights service, which were originally created for the defence of the Realm by his own subjects, which is more safe, then to trust to foreigners. But hereof you may read at large in Littleton Sect. 95, 96. & 103. & Li. Rub. Mavult enim princeps domesticos, quam stipendiarios bellicis apponere casibus.

This Tenure which now is called Escuage, or Servitium Scuti, was of ancient time named expeditio hominum cum scutis, as you may read in the Charter of King Kenulphus, who Anno Domini 821 & regni sui 25. granted to the Abbot of Abbandon many Mannors and Lands, and reserved quod expeditio-nem duodecim virorum cum tantis scutis exerceant, Antiquos pontes, & arces renouent, &c. Of all other services and Charges he and his Successors were discharged.

The Charter of King Ethelred. 1001 Bracton lib. 2. fo. 36, 37, &c. 1 part of the Institutes Sect. 103. Verb. Chivaler. Castle. Coming of enemies.

*In nomine excelsi Tonantis, cujus nutu & miseratione apio patre prædictus, ego Ethelred Rex totius Insulæ cum consensu & licentia Optimatum meorum aliorumque meorum fidelium dabo, & libenti animo concedo Clofic. quendam ruris particulam, hoc est, 20 mansos in loco quem rusticolæ vocitant at yceantun in hereditatem perpetuam, & semper liber permaneat notis & ignotis, magnis & modicis, ad habend' & tradend' qualicunq; voluerit relinquat ab omni tributo & \* servicio regali, nisi constructione pontis, & arcis ædificatione, & hostium expeditione. Actum est autem hoc meæ concessionis donum Anno Dominicæ Incarnationis 1001, &c.*

Ditone. Regist. fo. 2. Domesday tit. Cestresc.

In the Book of Domesday you shall find it thus recorded. Episcopus Baioc'.

Sudrie.

Ille qui tenet de Wodardo reddit ei 50 s. & servitium unius militis, and in divers other places. And in Domesday mention is often made of Drenches or Drenges, which is as much to say as Tenentes per servitium militare.

Many



Many others of this kind might be cited to prove that prudent Antiquity ever provided by reservation of tenure (amongst other things) for the defence of the Realm against the Invasion of Enemies.

All our ancient Authors treat hereof. See the First part of the Institutes, Sect. 103. and see the Grand Custom of Normandy. Cap 33. &c. fol. 49.

You have heard before de regali servicio, before the Conquest, but that regale servitium (which was Knights service) drew unto it relief, but neither Wardship of the body or of the land, as hath been said; it is true that the Conqueror in respect of that royal service as a badge of the Conquest took the wardship of the land and the marriage of the heirs within age of such tenants, but this granted not to the tenures of the subjects by Knights service, as it appeareth by Bracton: Dicitur Regale servitium, quia spectat ad Dominum Regem, & non alium & secundum quod in Conquestu fuit adinventum; & hujusmodi servicia persolvuntur ratione tenementorum, & non personarum, quia ex tenementis proveniunt, ut si dicatur faciendo inde forinsecum servitium, vel regale servitium, sive servitium Domini Regis, &c. So as the Conqueror provided for himself, but other Lords at the first by special reservation since the Conquest provided upon gift of lands for themselves: Regis ad exemplum totus componitur orbis, wherein that which we had from the Conqueror we freely confess, and that which the Normans had from us, we have truly related in other places.

The good King H. 1. son of the Conqueror finding that the wardship of the body and lands of his Tenants by Knight service, exacted by his Father, was both grievous and unjust, by his great Charter Anno primo Regni sui, reciting Quod Regnum suum oppressum erat injustis exactionibus, &c. (and particularly tempore patris sui) did grant (amongst other things) Quod si uxor cum liberis remanserit, dotem suam & maritadium habebit dum corpus suum legitime servabit & eam non dabit nisi secundum velle suum, & terræ & liberorum custos erit sive uxor, sive alius proquinqior, &c. To be short, by that golden Charter, Omnes malas consuetudines, quibus Regnum Angliæ injuste opprimebatur, inde abstulit, & legem Regis Edwardi reddidit. These were called King Edwards Laws, not that King Edward made them, sed quia ex tribus legibus, sc. Anglorum, Danorum, & Merciorum unam legem communem edidit. Vide Ranulph<sup>us</sup> Cestrensi. Li. 1. cap. 50.

And where some have objected that wardship is a badge of servitude, for that in the Writ of Nativo habendo, one of the Explees (amongst others) is capiendō redemptionem ab eo pro filiis & filiabus maritandis, & aliis Villanis servitiis: That is, taking ransom of him for the marriage of his sons and daughters, and other villain services. To this it is answered, that the King for marriage of his Wards taketh no ransoms, but such moderate sums of money, as in respect of the quality and state of the Ward, he or she, all circumstances considered, is able to pay, and in regard thereof he hath the protection of the Court of Wards during minority: but if ransoms should be taken, it should not only be against the right institution of Wardships before remembred, but also a badge of servitude: and therefore by the Statute of Magna Carta, of H. 3. cap. 4. 5. 6. (seeing the Crown had a long possession of the Wardship of the body and lands of the Kings tenant by Knights service) it was provided, first, that the King or his Grantee or Committee should not take of the lands of the heir \* but reasonable issues, reasonable customs and reasonable services, without destruction, &c. (and all unreasonable and excessive things are against the Common Law, Excessivum omne in jure reprobatur.) Secondly, Shall keep up the houses and other inheritance of the heir, and deliver to the heir, all his lands sowed with ploughs and all other things (woods and all) at least as he received them: whereby it appeareth, that the value of the marriage should be so reasonable, as the heir should not at his full age be enforced for payment thereof to sell either lands or goods. Thirdly, That if the heir be married, that he be advanced thereby, and not disparaged.

John Earl of Oxford being the Kings Ward married without the Kings Licence,

Glanv. l. 7. c. 9. 10.  
Ockham in diversis locis.

Mirror cap. 155.  
Bracton lib. 2.  
fol. 36 a. 83.  
Britton fol. 162;  
28. 95.  
Fleta l. 1. cap. 8:

Bract. l. 2. fol. 36;  
Ubi supra.  
The tenure (as before it appeared) was not then invented, but the freies of the tenure of the King, viz Wardship and marriage which was Bractons meaning.

\* Note, reasonable thrice repeated, that it might be observed.

Rot. Parl. 15 H. 6.  
nu. 19.



cence, for the which, both for the contempt, and for the duty to the King for so marrying, he was fined at Thre thousand pounds, which was not to the value of his lands by one year: and yet he petitioned in Parliament to be pardoned of part thereof, which was thought reasonable. And certainly the reasonable rating of Wardships of the body and lands is both according to the Laws of the Realm, and a mean of increase of the Kings Revenue.

As to the third: there were of ancient and latter times Masters or Keepers of the Kings Wards for the Kings best advantage, and the profits and revenue thereof were answered in the Kings Court of Exchequer: as taking one example of two instead of many for both the points.

\* Rex commisit Radulpho de Nova villa Episcopo Cicestr. & Stephano de Segrave custodiam omnium Escheatorum suorum qui accidunt per totum Regnum Angliæ, tam in Wardis, quam in omnibus aliis Eschaetis quæ Regi accidere possint, & respondend' inde ad Scaccarium.

a See the Statute of 51 H. 3. stat. de Scaccario. Sheriffs shall be keepers of the Kings Wards, and answerable for the issues thereof in the Exchequer.

b What care there was of ancient time to preserve the tree of pious, honorable, and profitable tenures of the King, and for profit especially tenures in Capite and by Knights service, and that the King should be truly answered of Wardships, and other fruits and profits due unto him by reason thereof, it notably appeareth by the Articles inquirable by the Justices in Circ, and by our ancient books.

\* *De Eschaetoribus & Subeschaetoribus in seiscina Dom' Regis facientibus vastum, vel destructionem in parcis, boscis, vicariis, vel Warrenis infra custodias sibi commissas per Dominum Regem, quantum & de quibus, & a quo tempore. Item de eisdem qui occasione hujusmodi ceperint bona defunctorum, vel heredum in manu Domini Regis injuste, donec redimerentur ab eis, & quid, & quantum pro hujusmodi redemptione & quid ad opus suum inde retinuerint, & a quo tempore. Item de eisdem qui minus sufficienter terras alicujus in favorem ejusdem, vel alterius cujuscunque cui custodia terrarum illarum dari, vendi vel concedi debuerit, in deceptionem Domini Regis, & ubi, & quando, & quid inde ceperint, & a quo tempore. Item de eisdem qui prece, precio, vel auxilio vel favore consenserint, vel consuluerint quod custodie Domini Regis venderentur pro minore precio, quam vendi deberent secundum verum valorem, vel maritagia ad Dominum Regem spectantia. Et si aliquo modo conclaverint custodias Dom' Regis, vel maritagia heredum, vel tenentium de Rege in capite, vel maritagia dominarum, viduarum maritatar' sine licentia Regis, & si quid propter hoc ceperint & quantum, & a quo tempore. Item de hiis qui reservaverint ad opus proprium custodiam, vel maritagium per leve precium, siue per conclamentum factum versus Dominum Regem, & cujusmodi damnum Rex inde habuerit, & a quo tempore. Item cujusmodi seiscierint terras, & per quantum tempus eas in manu Dom' Regis tenuerint. Item de terris captis in manu Dom' Regis, quæ capi non ideberent, & postea restitutis per præceptum Dom' Regis cum perceptis, utrum percepta restituerint ad mandata Dom' Regis, vel non. Et de omnibus predictis factis & commissis infra viginti & quinque annos proxime predictos predicti Justiciarii se intromittant. Et omnes illi qui sentiunt se super hiis gravatos, & inde conqueri voluerint, audiantur, & fiat eis super hoc justitia, & ipsi Justiciarii pro hiis quæ Dominum Regem contingunt diligenter inquirent, &c.*

Primo & principaliter inquiretur de feodis militum, & advocationibus Ecclesiarum ad Dom' Regem pertinentibus, viz. quot sunt, & quæ sunt tenementa, & quantitas tenuræ, & per quæ servicia. Item

\* Rot. finium.  
14 H. 3. m. 9.  
Hereof see Mat.  
Par. An. Dom. 1232  
16 H. 3. Of Hubert  
de Burgo, & Stephen  
Segrave.  
See also Int. Rot.  
finium, Anno 3 E.  
1. m. 4. Rot. Par.  
3 E. 1. m. 33. Rot.  
finiū. 13 E. 1. m. 24.  
a Rot. Pat. 25 H. 6.  
parte 2. m. 24.  
b See the 1 part of  
the Institutes, li. 2.  
per totum.

\* Capit. Itineris  
in Vet. Mag. Car.  
157, 158.  
Bract. l. 3. 116. b.  
Britton fol 28.  
Fleta l. 1. cap. 20.

Vet. Mag. Carta  
160, 161. Inter  
Capit. Eschaetria.

*Item si feoda illa integra sint vel demembrata, non habendo respectum ad tempus. Item si demembrata, per quem, quando, cui, qualiter, quomodo, & quantum valent per annum. Item si tradantur alicui ad terminum vite, vel annorum sine licentia Regis, tunc cui, quando, qualiter, & quomodo, & quantum valent per annum. Et si tenentur per medium, per quem medium.*

*Item de tenementis quæ tenentur de Rege in capite, vel teneri debent, si aliquis faciat se medium inter Dominum Regem, & verum tenentem suum, tunc queratur ubi, quando, qualiter, & quomodo, & ad quod damnum Regis, vel si modo tenuram mutaverint.*

*Item de aliis qui tenent de corona per magnam Serjantiam, vel parvam, antiquum dominicum Domini Regis, socagium, feodi firmam, vel per aliquod servicium, si iidem tenentes aliquod alienaverint, vel demembraverint, cui, quando, quantum, qualiter & quomodo, siue sint de aliquo honore, siue de corona, & de valore annuo. Et si aliquis, qui de Rege tenuerit per antiquum dominicum vel socagium, mutaverit tenuram suam, & ad damnum Regis, cui, ubi, quando, qualiter, & quomodo, & ad quod damnum Regis, & quantum huiusmodi tenementum valet per annum.*

*Item si aliquis concelaverit aliquem redditum, siue aliquod servicium, seu aliquas consuetudines Domino Regi debitas, tunc quis, quando, qualiter, & quomodo, & quæ servicia, & quem redditum, & quas consuetudines, & quæ tenementa tenent de quibus debentur huiusmodi servicia, & quantum valent per annum, & ad quod damnum Regis huiusmodi concelamenta sunt.*

*Item, de hæredibus quorum custodia & maritagium pertinent ad Dominum Regem, & Dominus Rex ea habuerit, quando deberet habere. Et si aliquis huiusmodi hæredum ingressus fuerit sine auctoritate Curie, & absque legitima ætatis sue probatione, si infra ætatem, & si plenæ ætatis, absque faciendo regi homagium, vel aliud servicium quod ei debet. Et tunc quis sit ille hæres, quo tempore intravit, & post mortem cuius & per quod servicium illa hæreditas teneatur, & quantum valet per annum.*

*Item de viduis similiter quarum maritagium pertinet ad Regem, si se maritaverint sine licentia Regis, cui, quando, cujus consensu, & ad quod damnum Regis, & quantum tenementa valent quæ tenent in dotem de primo marito suo.*

*Item de hæredibus qui deberent esse in custodia Regis, & quis custodiam usurpaverit super Regem, & a quo tempore, & quantum tenementa quæ tenent valent per annum.*

*Item si aliquis huiusmodi hæredum cuius antecessor de Rege tenuit in capite, siue de aliquo hærede in custodia Regis existente, maritatus fuerit sine licentia Regis, tunc cui, quando, & per cujus consensum, & quantum terre illæ valent per annum, & quantum cepit pro maritaggio.*

*Item si dominicæ terre Domini Regis in isto Wapentagio sunt in tali statu sicut esse deberent, vel si trahuntur ad firmam, si dimittantur secundum valorem annum earundem, & si custodes vel firmarii vastum vel destructionem, venditionem seu exilium fecerint in eisdem, vel in terris existentibus in manu Domini Regis per custodiam, vel alio modo, quis, ubi, quando, &c.*

¶ *Pea so precious was immediate tenures of the King, as you read in the Parliament Roll in 18 E. 1. in these words.*

*Gilbertus de Umphrevill petit licentiam quod possit feoffare Gilbertum filium*



Rot. Par. 18 E. 1.  
fol. 4. nu. 52.  
Note the form of  
this tenure.

*filium suum primogenitum, & Margar. uxorem ejus de manerio suo de Overton, Tenend' de ipso Gilberto patre durante tota vita ipsius patris, & post ejus decessum de capitalibus dominis feodi. Respons. Rex non vult aliquem medium. Ideo non concessit.*

14 E. 3. cap. 13.  
Stat. 1.

By the Statute of 14 E. 3. if the heir of the Kings tenant in Chief, &c. be found within age, and the next friends of the heir, to whom the inheritance cannot descend, shall come and offer them to take the said lands, yielding the value to the King till the age of the heir, as far forth as other will yield without fraud; by accord between the Chancellor and the Treasurer, they shall have Commission to keep the said lands by good and sufficient surety till the age of the said heir, and to answer the King the value. In this Act this Treasurer is intended of the Treasurer of the Exchequer. See before in the Chap. of the Court of Exchequer.

Rot. Par. 1 R. 2.  
nu. 79. Rot. Par.  
50 E. 3. nu. 118.  
\* Rot. Par. 22 E. 4.  
nu. 16. not in print

Amongst the petitions of the Commons, they pray that the said Statute of 14 E. 3. may be observed, which the King granted.

\* It is provided by Act of Parliament in An. 22 E. 4. that where sundry of the Kings tenants holding of him immediately, as of his Duchy of Lanc. by sundry recoveries, fines and seoffments in use, defeated the King of Wardships of body and lands: It is enacted, that the King and his heirs shall have the Wardship and custody of the body and lands of every such person being within age, to whose use the fee simple or fee tail of any hereditaments so holden shall grow as heirs by the death of any of his Ancestors, and if they be of full age to have relief notwithstanding any such conveyance.

Ibidem nu. 17.

An exact provision is made for Writs to be granted out of the Chancery for the embesiling of any such heir upon such pursuit of the Attorny of the Duchy.

4 H. 7. cap. 17. A  
general Law.  
Note the several  
pennings of these  
two several Acts.

By the Statute of 4 H. 7. it is provided that the Lord of Cestrie use, no will being declared, &c. shall have a Writ of right of ward for the body and land, and the heir of Cestrie use being of full age at the death of his Ancestor shall pay relief. And the heir of Cestrie use shall have like action of waste, as if the Ancestor had died seised, &c.

Dier 1 & 2 El.  
fol. 174. b.

Upon this Statute, a case that had in Mic. 1 & 2 El. depended undiscussed thirty years, as the Lord Dier reports, but not in the Court of Wards, (for that Court had not then had so long continuance) but in the Chancery and the Court of Wards it had so long continued, though in 7 H. 8. it had been resolved by all the Judges in the Exchequer Chamber, that Cestrie use of lands in fee by Knights service in Capite, and of lands holden of another Lord in socage dying seised of the use of both, his heir within age, and no will by him declared, that the prerogative shall hold place: which resolution if it had been published in print, the tedious and chargeable suit had not so long continued.

Keylway 7 H. 8.  
176. between Co-  
nisby and Throck-  
morton for the  
heir of Russel.

Lib. 4. fol. 55. &c.  
Vid. 2 E. 6. cap. 8.  
Lib. 7. f. 45. Lib. 8.  
168, 169.  
See the 2. part of  
the Inst. Cap. the  
Statute of 2 E. 6.  
c. 8. See 50 E. 3.  
nu. 184.  
See hereafter  
1 H. 8. c. 12.  
This Proclamati-  
on we have.

Now for Traverses, Monstrans de droit, &c. to be relieved against offices found for the King, you may read at large in our books, and especially in the Sadlers case in the Fourth book of our Reports, which being the birthright of the subject for his relief against a false office found, cannot be denied upon just cause shewed, but not to be used for delay. This was the offence of Sir Richard Empson and Edmund Dudley Privy Counsellors to King H. 7. and Masters of his forfeitures (a new and unaccustomed office) who causing secret and false offices (as shall appear hereafter) to be found, the parties grieved were denied to have their traverse, Monstrans de droit, &c. which King H. 7. a little before his death being far gone into a consumption, with great remorse of conscience amongst other things repented, and by Proclamation under the Great Seal in print (amongst other things) published in these words.

See the Statute of  
1 H. 8. cap. 12. in  
ratifying hereof.

And that none of his subjects ne make no doubt nor difficulty in all causes leeful to make traverses, for his Highness will expressly, and straightly chargeth and commandeth his Chancellor and Treasurer that they not only admit such traverses, but also grant the terms, where the case shall require, according to the true course of his Laws.

Here



Hereupon many men were admitted to their traverses, and many on the other side were without remedy; for by the practice of Empson and Dudley, many were not only denied to traverse, but enforced upon such false Offices to sue out their general Liveries, whereby they were concluded, and could not by Law be admitted to their traverse.

King H.8. in the first year of his Reign intending to give remedy against secret Offices, doth by Act of Parliament provide, \* That every Escheator and Commissioner shall sit in convenient and open places, according to the Statute heretofore made: and that the said Escheators and Commissioners shall suffer every person to give evidence openly in their presence, to such Inquests as shall be taken before any of them, upon pain of xl li.

And by the Preamble and other parts of this Act of 1 H.8. the sinister and unjust dealing of the said Empson and Dudley concerning the finding of Offices, are portrayed out, whereby the Kings Subjects then of late had been sore hurt, troubled, and wronged, and some disinherited by nine other ways. 1. In causing untrue Offices to be found. 2. In returning of Offices that never were found. 3. In changing of the Offices that were truly found. 4. That Escheators and Commissioners were men of no likelihood, but indigent and unworthy persons, ready to serve turns, and having nothing to lose, or to make satisfaction to the party grieved. 5. That Jurors were returned for the finding of Offices of no ability, or behaviour. 6. That the Escheator or Commissioner, when the Jury were agreed of their verdict, would not receive the same, but therein use delays. 7. That the Clerk of the Petit Bag, &c. would refuse to receive, and file such inquisitions as were found and offered to them. 8. The like of the Officer in the Exchequer, of Offices returnable into the Exchequer. 9. The Clerk of the Petit Bag would refuse to transcribe the Offices, &c. into the Exchequer. For all which, and the other two before named, remedy is provided by this Act, as by the same appeareth. At the same Parliament for the redress of parties grieved for suing out of Liveries, another Act is made, entitled, An Act concerning untrue inquisitions procured by *Empson and Dudley*, in these words.

Shewn to your discreet wisdoms, that where divers and many untrue Inquisitions by the procurement of *Richard Empson* Knight, and *Edmund Dudley*, have been had and taken within this Realm, as well before Commissioners assigned by Letters Patents of the late King, King H.7. as before his Escheators, as well by vertue of Writs of the said late King, as by vertue of their office, by the which Inquisitions, sometime parcel of the said Lands contained in the said Inquisitions, and sometime the whole Lands there founden holden of the said late King in Capite, where in troth the said Lands contained in the said Inquisitions, nor no parcel of them was holden of the said late King in Capite, ne of any of his Progenitors: To the which Inquisitions the parties then grieved by the same, could not, nor might not take their traverse to the same according to the Law of the Land, but were enforced and constrained to sue their \* Livery of the same out of the hands of the said late King, whereby they were, and be concluded to say, that the said Lands be holden of the King in Chief, to their great loss and hindrance, where in truth they were not holden of the said late King, ne of any his Progenitors. Wherefore be it enacted, ordained and esta-

ron, and the Court of Wards, in *Holmes Case*. 1. That the suing of a general Livery concludeth the heir, as here is appeareth by this Act of Parliament, but otherwise it is of a special Livery, for that, as to the tenure, is but, *ut dicitur*. 2. That this conclusion or Estoppel continueth but during the life of the heir that sueth the General Livery; for Jurors are sworn *ad veritatem dicend'*, and are not bound by Estoppels. 3. That by suing of Livery, and the death of the heir, the office is executed, and hath taken his full effect, and therefore the Estoppel expireth therewith, and after the office cannot be traversed. Vide 46 E. 3. fo. 12. 44 Ass. p. 35. *Nota dictum Mowbray ibidem*, *Si un tient de Roy, &c.* 1 H. 4. 6. 33 H. 6. fol. 7. per *Laiton*. Observe well the remedies provided by this particular Act, &c. whereby the Common Law is affirmed.

1 H.8. cap. 8.

3 H.8. cap. 2.

34 E. 2. cap. 13.

36 E. 3. cap. 13.

23 H. 6. 17.

\* By the procurement of Empson and Dudley, offices were found in secret places, and men were denied to give in evidence for proof of their rights and tenures.

a See before cap. Of the high Court of Parliament.

1 H.8. cap. 12.

\* This is intended of a general Livery.

General Livery concludeth.

a Mich. 7. Jacobus resolved by the two Chief Justices and the Chief Baron.



blished by the King our Sovereign Lord, the Lords spiritual and temporal, and by the Commons in this present Parliament assembled, and by the authority of the same, that every person and persons having possession of the said Lands contained in the said Inquisitions, or any part thereof, may be admitted to have their traverse to the said untrue Inquisitions, notwithstanding any Livery sued in the time of the said late King, King H.7. And that it be further enacted by the same Authority, that any Livery sued of the same in the time of the said late King, ne any thing contained in the same Livery, be any conclusion after the course of the Common Law, or in any wise hurtful or prejudicial to any person or persons, that shall happen to tend their traverse to the said Office, but that they and every of them shall be admitted to their traverse to the said Inquisitions, and to have like advantage in the Law, as though no Livery had been sued of the same in the time of the said late King, and this at the reverence of God, and in the way of charity, &c. Provided alway, that they, or any of them which shall tend their traverse to any of the said Inquisitions in any manner and form as is aforesaid, shall not be restored to any mean issues or profits of Lands and Tenements comprised in the said Inquisitions.

See the first part of the Institutes Sect. 441. See before Cap. of the High Court of Parliament.

5 H.8. cap. 7.

Now touching Liveries which in those days were general, what a world of troubles the Subjects suffered for missing of Livery in respect of pretended omissions, and the like, what charging the Subjects with values not found by any Office, nor appearing by any *Melius inquirendum* with mean rates where none were, or for longer time, then they were due, and the like, and these not recovered by course of Law, but sending for the parties by Pursuivants, and by their awful countenance mixt with menaces and threats, drew them to compositions: Which, and other like oppressions and injustice, filled King H.7's Coffers; for by the Close Roll in Anno 3 H.8. it appeareth, that the King left in his Coffers Fifty and three hundred thousand pounds, most part in forrain Coin, which in those days was not of least value. Notwithstanding King H.8. at his Parliament holden in Anno 5. of his Reign, Cap. 7. moved for a Subsidy, and was denied it; whereupon an Act was made for taking out of general Pardons, as a mean to bring money to the King. But I perswade my self the Reader will inquire what became of these two wicked men Empson and Dudley. The answer is, that first they were severally indicted as followeth,

\* Ambitio.

Proditorie legem Angliæ subvertens

Falsas Inquisitiones & Officia, &c.

Ad traversas admitti non potuissent.

*Juratores præsentant quod Rich. Empson nuper de London Miles, nuper Consiliarius excellentissimi Principis Henrici nuper Regis Angliæ Septimi, 10. die Maii, anno regni dicti nuper Regis vicesimo, ac diversis vicibus antea & postea apud London, &c. Deum præ oculis non habens, sed ut filius diabolicus imaginans honorem, dignitatem, & prosperitatem dicti nuper Regis, & prosperitatem regni sui Angl. minime valere, sed ut ipse magis singulares favores dicti nuper Regis adhibere \* unde magnatem fieri potuisset, & totum regnum Angl. secundum ejus voluntatem gubernare, falso, deceptivo, & proditorie legem Angl. subvertens, (inter alia) idem Rich. dictis die & anno apud London in Parochia & Ward præd. &c. diversas falsas Inquisitiones, & Officia de intrusionibus & alienationibus, de maneriis, terris & tenementis, diversis ligeis ipsius nuper Regis inveniri procuravit & excitavit, quod ipsi maneria, terras & tenementa in Inquisitionibus illis specificat de domino Rege in Capite vel aliter tenerent, cum ita non fuit, ac postea cum dicti ligei dicti nuper Regis ad Inquisitiones illas sic factæ traversas in Curia ipsius nuper Regis secundum legem Angliæ tendere & allegare voluissent, iidem ligei ad traversas illas admitti non potuissent, sed se debitis & legitimis*



*legitimis transversis ad officia prædict' faciend' custodivit & retardavit, quousque ipsi cum dicto Rich. diversas & magnas & importabiles fines & redemptiones, tam pro commodo ipsius nuper Regis, quam pro singulari commodo ipsius Rich. fecer', in magnam depauperationem eorundem ligeorum. Et quod prædict' Rich. dict' die & anno in Parochia & Warda prædict', ac diversis vicibus antea & postea, diversos ligeos dict' nuper Regis de dicto domino Rege diversa maneria, terras, & tenementa per servic' Milit' tenent', & mort' antecessor' suis ipsis infra etatem existent', & in custodia dict' nuper Regis ratione tenuræ suæ, cum ad etates legitimæ pervenerunt, & debitam liberationem maneriorum, terrarum, & tenementorum suorum secundum formam & legem Angl', ac secundum cursum Cellariæ ipsius nuper Regis prosequi voluissent, ad hoc recipi non potuissent, sed ad hoc faciend' totaliter negat & exclus' fuerunt, quousque ipsi cum prædict' Rich. diversas magnas & importabiles fines & redemptiones, tam pro commodo ipsius Regis, quam pro commodo ipsius Rich. fecer', in magnam depauperationem eorundem ligeorum ejusdem nuper Regis. (And the conclusion of the Indictment is,) Per quod plures & diversi populi dicti nuper Regis hiis gravaminibus & injustis extortionibus multipliciter torquebantur, in tantum quod populi dicti nuper Regis versus ipsum Regem multipliciter murmurabant, & malignabant in magnum periculum ipsius nuper Regis regni sui Angliæ, ac subversionem legum & consuetudinum ejusdem regni.*

Pro singulari comodo ipsius Richardi.

Ad debitam liberationem admitti non potuissent.

The residue of the Indictment concerning other exorbitant oppressions & grievances, are worthy to be read, but concern not the matter in hand.

True it is, that in this Indictment [proditorie] was used but for aggravation, and as a preparative to greater offences, for in the same year they were both indicted of high Treason both by the Common Law, and Act of Parliament, and in the 2 year of H. 8. they lost both their heads. And albeit in some respects the special Liberty is for the benefit of the heir, yet the fees and charges are so great, and the Bonds and Covenants, &c. so many, so intricate, and dangerous, as it were worthy to be redressed, for the ease and quiet of the Fatherless and Widows, (being no benefit to the King, but to fill the purses of Clerks and Officers) by authority of Parliament; and the rather, for that special Liveries were of ancient time, as short as the charges thereof; whereof you may read a notable president, when Wardships and Liveries were in their Cradles, which followeth in these words.

Quorum vestigiis qui insunt, eorum exitum perhorrescant.

Richardus Dei gratia Rex Angliæ, Dux Normanniæ, Aquitaniæ, Comes Andegaviæ, Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Justiciariis, Vicecomitibus, & omnibus Ballivis, & fidelibus suis, ad quos præsens Charta pervenerit, Salutem. Sciatis nos a concessisse, & præsentî Charta nostra confirmasse dilecto & fideli nostro Galfrido filio Petri, & Beatriæ de Saye uxori ejus, tanquam justo & propinquiore heredi, totam terram Comitis c Will. de Mandevile, quæ ei jure hereditario pertinebat, cum omnibus pertinentiis, & libertatibus, & liberis consuetudinibus suis. Quare volumus, & firmiter præcipimus quod prædicti Galfridus & Beatrix uxor sua, & heredes eorum habeant & teneant de nobis & heredibus nostris totam prædict' terram cum pertinentiis suis, sicut prædict' Comes Will. de Mandevile eam melius, & liberius, & honorificentius, & integrius, & quietius habuit unquam & possedit, in bosco, & plano, viis, semitis, pratis, pascuis, pasturis, aquis, vivariis, stagnis, piscariis, molendinis, turbariis, in ad-vocationibus Ecclesiarum, in custodiis vactorum, & donationibus puellarum, & in omnibus aliis locis & aliis rebus. Hiis testibus Waltero Rothomagenfi Archiepiscopo, Johan' Eboracensi Episcopo, Rogero de Pratellis

Vid. in the history of Hovenden, pag. 446. 2 R. 1.

a Nota, concessisse is a sure word in omnem eventum, and will answer to a Livery.

b This Geoffrey Fitzpeter was after Chief Justice of England.

c This William de Mandevile was Earl of Essex.



*Dapifero nostro, Rich. de Kanvile, Bertrano de Verduno, Radulpho filio Godfredi Camerar' nostro. Dat. per manum Magistri R. mali catuli clerici nostri, Anno regni nostri secundo, xxij die Januarii apud Messanam.*

Now are we arrived at the said Act of Parliament in Anno 32 H. 8. wherein, and in the Statute of 33 H. 8. besides the exposition of the several Texts, we will observe what alterations these two Acts have made.

¶ Ordaineth, maketh, establisheth, and erecteth a Court, &c. ] Herein three things are to be observed. 1. That this new Court could not be erected without an Act of Parliament. 2. That when a new Court is erected, it is necessary that the Jurisdiction and Authority of the Court be certainly set down. 3. That the Court can have no other Jurisdiction then is expressed in the erection, for this new Court cannot prescribe.

Pasch. 6. Ja. the Bishop of Salisbury case.

Pasch. 6. Ja. the case between the King and the Bishop of Salisbury, referred to the two Chief Justices and Chief Baron, by the Lords of the honourable Order of the Garter, was this. King E. 4. by his Letters Patents in French, bearing date 10 Octobris Ann. 15. of his Reign, reciting, that where there was no Office of the Chancellor of the Garter, that there should be such an Office of the Chancellor of the Garter, and that none should have it but the Bishop of Salisbury for the time being: We will and ordain, that Richard Beauchampe, now Bishop of Salisbury, should have it for his life, and after his decease, that his Successors should have it for ever. And amongst divers other points it was resolved unanimously, that this grant was void, for that a new Office was erected, and it was not defined what Jurisdiction or Authority the Officer should have, and therefore for the incertainty it was void. Which being reported to the Lords, they were well satisfied therewith, and thereupon the Office was granted to Sir John Herbert the Kings Secretary.

¶ A Court of Record. ] Where it is to be noted, that albeit the proceeding in this Court be in English, yet it is a Court of Record by express words of the Act.

¶ And shall have also a Seal, &c. ] This is also necessary to a Court.

¶ That all Wards, &c. ] This Clause extendeth as well to the Counties Palatines of Lancaster, Chester, and Duresme, as to any other the parts of the Realm of England, but in several manners. For as to the Wards within the Realm of England (out of the said Counties Palatines) the Writ for the finding of the Office, &c. issueth out of the Chancery of England, returnable in the Chancery of England. And as to the Wards in the Counties Palatines of Lancaster and Duresme, the Writ likewise issueth out of the Chancery of England, but is returnable into the Chancery respectively of these two Counties Palatine, and the Chancellors thereof are to transcribe them into the Court of Wards.

V. Rot. Parl. 9 R. 2. nu. 13. the resolution of all the Judges of England what right the Duke of Lancaster had to the Wardship of Isabel the Heir of Tho. of Lathom whom Sir John Stanly had married, for the manner of Lathom holden of him in chief as of his County Palatine. V. 26 H. 8. 9. b. a 14 El. Dier 303. b Mich. 26 E. 1. coram rege. Buck. William de Laudaes case. c 8 H. 6. cap. 16. 18 H. 6. cap. 6. d 18 Eliz. cap. 13.

a But for Wards in the County Palatine of Chester, no Writ issueth out of the Chancery of England, but it ought to be found by force of a Writ or Commission out of the Chancery there in the Exchequer, and transcribed by the Chamberlain of that County Palatine into the Court of Wards. b Nos dum hæredes in custodia nostra existunt, indemnes & sine exheredatione conservare tenemur.

c And by this Clause of this Act of 32 H. 8. the power that the Lord Chancellor and Treasurer had for letting of Wards lands, &c. is taken away.

d By the Statute of 18 El. it is enacted, That all Inquisitions and Offices to be found before any Escheator or Commissioners, by virtue of any Writ or Commission, or otherwise within the said County Palatines of the said Duchy of Lancaster, Chester, and Duresme, or any of them, shall be returned by the said Escheators or Commissioners within one month next after the taking of any such Office or Inquisition into such place or places, and to such office and offices, as heretofore they have usually been accustomed to be certified and returned into, upon pain to forfeit for every default 40 li. to the use of our said Sovereign Lady, her heirs, and



and successors. And that the Clerk of the said Duchy of *Lanc*, the Vicechamberlain of the said Earldom of *Chester*, and the Chancellor of the said County Palatine of the said Bishoprick of *Duresme*, or other the said Officers or Ministers within the said Counties Palatines, or their Deputy or Deputies, and every of them for the time being having authority to receive any such Office or Inquisition, to whose hands any such Office or Inquisition shall come to, shall certify or cause to be certified under his or their hands in parchment the true transcript of every such Office or Inquisition taken before any of the said Escheators or Commissioners unto the Master of the said Court of Wards and Liveries, in such like manner, form and sort, as is limited and appointed the Clerks of the Petit Bag in her Highness said Court of Chancery to transcript the same, upon pain to forfeit for every such default 5 l. to the use of our said Sovereign Lady, her Heirs and Successors: which transcript so to be certified shall there remain of Record in like manner and form to all intents and purposes, as the transcripts of other Offices already certified into the said Court by the Clerks of the Petit Bag in her Majesties high Court of Chancery, are used: any Custom, Statute, Act, Proviso or Provisoes heretofore had, made, or used to the contrary in any wise notwithstanding.

The Statute of 32 H. 8. for erection of the Court of Wards extended only to Wards: but the Statute of 33 H. 8. annexeth to this Court Liveries also. Now in what cases the Heir shall be in Ward or sue his Livery, either by the Common Law, or by the Statutes, and specially of 32 H. 8. & 34 H. 8. &c. and of all incidents to the same, you shall read plentiful matter both in the First part of the Institutes, Cap. Escheage, & Cap. Service de Chivalier: And also in the Books of my Reports.

[ Which the Kings Highness, &c. ] Although successors be not here named, yet (Kings Highness) being spoken in his Royal and politic capacity, which never dieth, doth extend to his Successors: otherwise this Court had been dissolved by the demise of H. 8.

*a* All the Justices in Ireland certified, Quod homagiū tantū dat secundū consuetudinem terræ Hiberniæ custod' & maritag', licet servitium militare non debeatur.

[ b Intituled to have ] That is by Office to be found.

[ With their Mannors and Lands, &c. ] This Clause extendeth only to the Inheritances of the Ward, and not to any of his goods or chattels, debts or duties, &c. but hereof more shall be said hereafter in his proper place.

[ In the order, survey and governance of the said Court. ] *c* The general words of this Act extend not into Ireland, for that is a divided, and distinct Kingdom, and hath a proper Seal. *d* Nor to the Isle of Man, because it is no part of the Realm of England, and out of the power of the Chancery of England, and not to be bound by our Parliament of England, but by special name.

[ And that the Master of the said Wards. ] By this Clause the Master only hath power to award Proses.

[ Such Proses and Precepts with reasonable pains therein limited, as be now commonly used in the Court of the Duchy Chamber of Lancaster being at Westm. ] *e* Note, the Duchy of Lancaster was created a County Palatine by Act of Parliament in Anno 50 E. 3. Adeo plene & integre sicut comes Cestrie infra eundem com Cestrie dignoscitur obtinere. And hereupon the Court of Wards is well warranted to be a Court of Equity, and accordingly from the erection hereof it hath proceeded.

[ f For or concerning the Title of the Kings Majesty. ] This is evident.

[ And that the Master of the Court of Wards for the time being shall make and appoint all and singular particular Receivers, Feodaries, and Surveyors in every Shire, and also fees for the execution of the same under the Seal of the same Office in such wise as the same Officers may be always removeable at the discretion of the said Court. ]

Feodarius

*a* Mich. 7 E. 1. in Banco.

Rot. 126. Warw. Abbot of Malmshurries case.

*b* See 33 H. 8. c. 22. A proviso for the Duchy of Lancaster

*c* 14 El. Dier 303.

*d* Mich. 14 H. 8.

Tenus per Brudnel, Brook & Fitz. in Keyways Report.

And so was it holden Trin. 40 E. 3.

by Popham, Anderson, and Percā, upon a case referred to them by

the Lords of the Council, between the Earl of Derby

and the Heirs general.

*e* See more hereof in the Chapter of the Court of the Duchy of Lancaster.

And Pl. com. fol. 214. & 215.

*f* Pl. com. fol. 115. 116. in Townsends case.



\* See the first part  
of the Inst. Sect. 1.

Feodarius or Feudatorius is derived à Feodo seu Feudo, which in one sense signifies a \* Seigniorie or Tenure: His Office consisteth principally in three things: 1. And principally to be skilful in the knowledge of the Kings Tenures within his Office out of Records and authentical Books. 2. At the finding of Offices to do his uttermost endeavor to manifest the truth concerning the Kings Tenures. 3. After the Office found to survey the Wards lands, and rate it.

See Pl. Com. f. 295.  
Carills case.

See Mag. Car. c. 5.  
the stock of goods  
shall be restored  
to the heir.  
Glanvil fol. 54.  
Fleta li. 1. cap. 11.

\* Prærogativa Re-  
gis, cap. 3.

[Or other cause in any wise touching or concerning any thing appointed to the order of the said Court, for, and on the behalf of our Sovereign Lord the King.] By this Clause, if the Heir within age and in Ward have any goods and chattels, debts, duties, or other thing due unto him, an information may be exhibited by his Majesties Attorney of his Wards for his Majesty on the behalf of the Heir; for this doth touch or concern the value of the Wardship of the body, which is appointed by this Act to the order and survey of this Court, for the value of the marriage is hereby advanced. But if the Heir at the death of his Ancestor be of full age, seeing the primer seisin is certain, no suit can be in this Court for any goods, chattels, debts, &c. belonging to the Heir of full age: \* for this doth not in any wise concern any thing appointed to the order of this Court, viz. neither the Wardship of the body, or of the lands of the Heir.

[Also be it enacted that the said Attorney, Receiver General, and Auditors, &c.] The Judges of this Court are the Master, the Surveyor, the Attorney, Receiver General, and the Auditors of that Court. For the words of the Statute of 32 H. 8. are, That the said Attorney, Receiver General, and Auditors, shall diligently from time to time attend upon the said Master in the said Court for the hearing and ordering of matters and causes, &c. and the Statute of 33 H. 8. hath added the Surveyor in the second place in that Court: and albeit honoris causa, they are to attend on the Master, as the chief and principal Officer of the said Court, for so he is styled by both the said Statutes: yet such attendance is for the hearing and ordering of matters and causes, &c. which maketh them Judges. And see the Oath of the Surveyor, which proveth his Office to be judicial: for by the Statute of 33 H. 8. his Oath is (*inter alia*) That he shall minister equal justice to rich and poor, &c. and that he take no gift or reward for any matter depending, &c. in that Court. And the like Oath in effect taketh the Attorney, the Receiver General and Auditors, by the said Act of 22 H. 8. And so it was resolved in Auditor Curles case when Robert Earl of Salisbury was Master of the Wards and Lord Treasurer of England.

Hil. 7 Jac. lib. 11.  
fol. 2 & 3 in Au-  
ditor Curles case.

See the Statute of Lincolne 29 E. 1. Stanf. Prær. Regis Ca. Refeiser. See a notable case upon that Statute within three years after the making thereof. Hil. 32 E. 1. Coram Rege. Northampton Jorden Twinewilkes case.

At the Parliament holden 18 Jacobi Regis it was moved on the Kings behalf, and commended by the King to the Parliament for a competent yearly rent to be assured to his Majesty, his Heirs and Successors, that the King would assent that all Wardships, primer seaisins, reliefs for tenures in capite, or by Knights Service should be discharged, &c. Wherein amongst certain old Parliament men these thirteen things did fall into consideration for the effecting thereof.

1. That it must be done by Act of Parliament, and otherwise it cannot be done.
2. That all Lands, Tenements, Rents, or Hereditaments, holden of the King, to be holden by fealty only, as of some honour, and such rent, as is now due.
3. That all lands holden of Subjects, Bodies Politick or Corporate, by Knights service to be holden by fealty, and such rent, as is now due: for if lands should be holden of them by Knights service, the same might come to the King.

4. All Subjects, Bodies Politick and Corporate to be disabled to take any Lands,

Lands, Tenements, Rents, or Hereditaments of the King, his Heirs, or Successors by any other tenure, then by fealty only, and yearly rent, or without rent of some honour.

5. No Subject, Bodies Politick or Corporate to create by any license, or any other way or means, any other tenure then by fealty and rent, or without rent upon any estate in fee-simple, fee-tail or otherwise.

6. In respect of the said discharge and freedom of the Subjects and their posterities, and that they shall be also discharged thereby of fines and licenses of alienations, respect of homage and reliefs; \* a Competent rent to be assured to the King, his Heirs and Successors of greater yearly value then he or any of his predecessors had for them all, which rent is to be inseparably annexed to the Crown, payable at the Receipt only.

\* First search must be made what the King hath been answered for these, &c.

7. A convenient rent to be assured to the Lords for every Knights fee, and so ratably.

8. Commissions for the finding out of the tenures of the King, and the Subject to be returned, &c.

9. Ideots and Madmen to be in the custody of some of their kindred, &c. and not of the King, his Heirs or Successors.

10. The Court of Wards to be dissolved with Pensions to the present Officers.

11. Provision to be made for regulating of Guardian in Socage, and that the Ancestor may appoint Guardians, &c. and that no Guardian shall make a grant to the King.

12. Provision to be made that Bishops shall continue Lords of Parliament, notwithstanding their Baronies be holden in Socage.

13. That the Act shall be favourably interpreted for discharge of all Wardships &c.

Which motion, though it proceeded not to effect, yet we thought good to remember it, together with these considerations; \* hoping that so good a motion tending to the honor and profit of the King and his Crown for ever, and the freedom and the quiet of his Subjects and their posterities, will some time or other (by the grace of God) by authority of Parliament one way or other take effect and be established.

\* *Spes est vigilantis somnium.*  
Hope is the dream of a waking man.

And we will conclude this Chapter with holy Scripture: Deus est pater Orphanorum, & Judex viduarum. And again, Deus custodit advenas, pupillum, & viduam suscipiet. And lastly, In Deuteronomy 27. 19. Maledictus est qui pervertit judicium advenæ, pupilli, & viduæ.

Psal. 46. 9. & 67. 6.

Deut. 27. 19.



## CAP. XXXVI.

*The Court of the Duchy Chamber of Lancaster at Westm'.*

**F**Orasmuch ( as it hath been said ) the Court of Wards hath some reference to this Court of the Duchy, we thought it fit to treat of this Court of the Duchy next after the said Court of Wards, for that it may give some light thereunto. Now for that the County of Lancaster is a County Palatine, it shall be necessary to shew the beginning and erection thereof.

Rot. Pat. Anno  
29 E. 3.

Rot. Par. 36 E. 3.  
nu. 36, 37.  
Rot. Pat. Anno  
36 E. 3.

Rot. Pat. Anno  
50 E. 3. See the 2.  
part of the Inst.  
Mag. Cart. c. 31.  
32 H. 6. fol. 13. the  
King may make a  
County Palatine  
by his Letters Pa-  
tents without Par-  
liament.

*a* De assensu Præ-  
latorum & proce-  
rum. 12 E. 4. 16.  
*b* Five things to be  
observed for erec-  
ting a County  
Palatine.

1 Cancellaria.  
2 Brevia sub sigil-  
lo suo.  
3 Justiciarios suos  
tam ad Placita  
Coronæ quam alia  
placita, &c.

4 Quæcunq; alia  
jura regalia ad  
Com' Palatinum  
pertinentia.

5 Adeo libere &  
plene prout co-  
mes Cestriæ.

See 19 H. 6. 12.

11 E. 4. 8.

*c* 26 E. 3. 59. b.

Divers have Coun-  
ties Palatines that  
are not Earls, as  
they appear here-  
after.

King Edward the 3d created John his fourth son Earl of Richmond, Anno Domini 1355. He 19 Maii Anno Domini 1359. married Blanche youngest daughter of Henry Duke of Lancaster ( the second Duke that England saw. ) Duke Henry died of the Plague, An. 35 E. 3. At the Parliament holden An. 36 E. 3. the King in full Parliament did gird his son John with a sword, and set on his head a Cap of Fur, and upon the same a circle of Gold and Pearls, and named him Duke of Lancaster, and thereof gave to him, and to his heirs males of his body, and delivered him a Charter.

In full Parliament, An. 50 E. 3. the King erected the County of Lancaster a County Palatine, and honored the Duke of Lancaster therewith for term of his life in these words.

Edwardus Dei gratia, &c. Sciatis quod si nos debita consideratione pensantes gestus magnificos cunctorum qui nobis in guerra nostra laudabiliter & strenue servierunt, ipsos desideremus honoribus attollere, & pro veribus juxta merita præmiare, quanto magis filios nostros, quos tam in sapientia, quam in gestu nobili alios præcellere conspiciamus, & qui nobis locum tenuerunt, & tenere poterunt potioem, nos convenit majoribus honoribus & gratiis prærogare? Considerantes itaque probitatem strenuam, & sapientiam præcellentem charissimi filii nostri Johannis Regis Castellæ & Legionis, Ducis Lancastriæ, qui laboribus & expensis semper se nobis obsequiosum exhibuit pro nobis pluries in necessitatibus intrepide se guerrarum discriminibus exponendo, & volentes eo prætextu, ac desiderantes eundem filium nostrum aliquali commodo & honore ad præsens ( licet non ad plenum prout digna merita exposcunt ) remunerare; ex certa scientia nostra, & læto corde *a* de assensu Prælatorum & Procerum in instanti Parlamento nostro apud Westm' convocati existen: *b* Concessimus pro nobis & hæredibus nostris præfato filio nostro quod ipse ad totam vitam suam habeat infra Comitatum Lancastriæ Cancellariam suam, ac Brevia sua sub sigillo suo pro officio Cancellarii, deputando, consignando Justiciarios suos tam ad Placita Coronæ, quam ad quæcunque alia Placita communem legem tangentia, tenenda, ac cognitiones eorundem, & quascunque executiones per brevia sua & ministros suos faciendas. Et quæcunque alia libertates & jura regalia ad comitatum Palatinum pertinentia, adeo libere & integre sicut comes Cestriæ infra eundem Comitatum Cestriæ dignoscitur obtinere, &c.

*c* But it appeareth by the book of 26 E. 3. 59. b. that the said Henry Duke of Lancaster had the like grant; for there in a Præcipe the tenant vouched, and that he might be summoned in the County of Lancaster, and the Vouches challenged, because in the County of Lancaster the Kings writ did not run, sed non allocatur, but a Writ sent to the Duke or to his Lieutenant to summon the Vouches in the same manner as it should be done in Chester. Vid. 39 E. 3. Voucher 198.

It is called Comitatus Palatinus, a County Palatine, not à Comite in respect of the dignity of an Earl, but à Comitatu, & à Palatio Regis, because the owner thereof, be he Duke or Earl, &c. hath in that County Jura regalia, as fully as the King



King had in his Palace, from whence all Justice, Honours, Dignities, Franchises and Priviledges, as from the fountain at the first flowed. Neither by this Chapter was the Duke of Lancaster created Count Palatine, but the County was made a County Palatine. The power and authority of those that had County Palatines was King-like, for they might pardon Treasons, Murders, Felonies, and Outlawries thereupon. They might also make Justices of Eire, Justices of Assise, of Gaol-delivery, and of \* the Peace. And all original, and judicial Writs, and all manner of indictment of Treasons and Felony, and the proces thereupon was made in the name of the persons having such County Palatine. And in every Writ and Indictment within any County Palatine, it was supposed to be contra pacem of him that had the County Palatine. But these and some others are taken away from them that have such Counties Palatines, and annexed to the Crown, and all Writs to be made in the Kings name, but the Teste is in the name of him that hath the County Palatine: and they shall have forfeitures of lands and goods for high Treason, which forfeiture accreth by the Common Law. But for Treasons or forfeits given after the erection of the County Palatine by any Act of Parliament, they shall not have them.

\* 20 H. 7. 6. 8.

27 H. 8. cap. 24.

Pasch. 12 Eliz.  
Dier 288, 289.

Justices of Assise, of Gaol-delivery, and of the Peace, are, and ever since the erection of the County Palatine of Lancaster, have been made and assigned by Commission under the Seal of the County Palatine of Lancaster.

27 H. 8. cap. 24.

In the County Palatine of Lancaster fines are levied with three Proclamations, &c. before the Justices of Assise there, or one of them: and all recoveries to be had of any lands or tenements in the County Palatine are to be had in the Court of that County Palatine, and cannot be had at Westminster.

37 H. 8. ca. 19.  
36 H. 7. fo. 33.  
9 H. 7. fo. 12.

a In trespasss in the County Palatine of Lancaster, the Defendant pleaded a forrain release, the Court prefixed a day to the parties in Wank, the Record must be removed by Certiorari in Chancery, and by Mittimus into the Bench, there to be tried.

a 22 H. 6. 48.

b If issue be joined in the Kings Bench, or Common Bench triable in the County Palatine of Lanc', it shall be tried in the County of Lanc' and remainded hither.

b 27 E. 3. 84.  
21 H. 7. 33.  
39 H. 6. 21, 22.  
19 H. 6. 12.  
32 H. 6. 25.  
19 E. 3. trial 66.  
45 E. 3. Visue 50.  
c 9 E. 3. cap. 4.  
8 All. 27. 10 E. 3.  
41. 19 H. 6. 12, 53.  
21 E. 4. 8. a. & b.  
27 E. 3. 84.  
46 E. 3. Visue 53.  
Per tous les Justices.  
10 H. 4. 40.  
10 H. 6. 15, 16.  
Per Martyn.  
8 H. 6. 3. per  
Strange.

c Where a release or other special dæd is pleaded in bar in any Court at Westminster, within a Franchise where the Kings Writ runneth not, it shall be tried where the Writ is brought. See the books quoted in the margin. And in this variety of opinions I hold the Law to be, that this Statute of 9 E. 3. extends not to cases when any other issue is joined triable in the County Palatine or other Franchise; And I ground my opinion upon the resolution of all the Judges of England in the Erchequer Chamber, in Anno 32 H. 6. 25. See 39 H. 6. 21, 22. 21 H. 7. 33. 21 E. 4. 33, 34, 35, 36.

Vid. Lib. Intr. fo. 81, 82. pl. 8. Henry Parayes case in debt, In Camera Guildhall Civitatis London.

d King H. 4. by his Charter by Authority of Parliament, Anno primo of his Reign, doth sever the possessions of the Duchy, &c. from the Crown: And that which John of Gaunt held for life, is established for ever, and especially by the Statutes of 1 E. 4. and 1 H. 7. hereafter mentioned: and this separation H. 4. made, for that he knew he had the Duchy of Lancaster (par multis regnis) by sure and undefeasible title: and he could not be both Rex and Dux, but specially that his title to the Crown was not so assured, for that after the decease of R. 2. the right of the Crown was in the heir of Lionel Duke of Clarence, second son of E. 3. John of Gaunt Father of H. 4. being the fourth son: and therefore he intended not, that by the Law of the Crown the Duchy should go with the Crown, and that he should be seised thereof in the right of the Crown, as the King afterwards was of the possessions of the Duchy of York, Earldom of March, and others.

Lib. Inc. Kastal. fo.  
d Rot. Pat. 1 H. 4.  
intituled Carta  
Regis H. 4. De separatione Ducatus  
Lancastrie a Corona  
authoritate Parliamenti anno regni sui primo.  
e Rot. Parl. 1 E. 4.  
Pl. Com. 219. b.  
\* Vide Rot. Parl.  
1 H. 6. Partition  
recited an. 9 H. 5.  
between H. 5. and  
the said Eleanor.

Humphrey de Bohun Earl of Hereford, Essex and Northampton being the first and last Earl of that name, and seised of large possessions in England and Wales, had issue two Daughters; \* Eleanor the eldest married to Thomas Duke of Glouc', and Mary married to the Earl of Hertford.



Rot.Par.Anno  
2 H. 5. nu. 30.  
3 H. 5. nu. 15.  
confirmed, and  
that no Land  
should pass of  
Duchy, but under  
the Duchy Seal.  
2 & 3 Ph. & Mar.  
cap. 20.  
a See the 1. part  
Inst. Sect. 8.  
b Rot. Par. 1 E. 4.  
nu. 26.  
Pl. Com. 222.  
Vid. l. f. 5. the  
Princes case.

c Rot. Par. 1 H. 7.  
\* Nota his heirs  
without saying  
(Kings of England)  
as E. 4. did.  
21 E. 4. 60.  
Vid. Dier 1 El.  
168. b.  
d 32 H. 8. cap. 20.  
1 E. 6. cap. 14.  
1 El. cap. 31.  
e Rot. Par. 9 R. 2.  
nu. 13.  
28 H. 3. Brook  
Livery 55. Livery  
within the County  
Palatine, but not of  
a tenure without.  
26 H. 8. 9.

Vid. 33 H. 8. c. 39.  
22 H. 8. c. 20.  
3 E. 6. cap. Custos  
Rotulorum.  
f 2 & 3 Ph. & Mar.  
cap. 20.

21 E. 4. 60. 71.  
Pl. Com. 219.

Vid. 33 H. 8. ca. 39.  
which see before  
in the Chap. of the  
Court of Wards.  
See 27 H. 8. ca. 11.  
there also is a  
Chancellor of the  
County Palatine.

Hil. 1 E. 6. Brook  
Travers 53.

It is enacted that all the Mannors and Hereditaments which descended to H. 5. after the decease of the said Mary his Mother, as Son and Heir unto her, should be dissevered from the Crown of England, and annexed to the Duchy of Lancaster, and to be of the same nature, as by the Kings Letters Patents established by Parliament there appeareth; where you may read of many Franchises and Liberties belonging to the Duchy.

a Here it is to be observed, that albeit these possessions descended to King H. 5. as heir to his Mother, yet he was thereof seised in Jure Coronæ, and therefore this Act dissevereth them from the Crown.

b The Duchy of Lancaster as separated, &c. is by Act of Parliament assured to E. 4. and his heirs Kings of England. By this Act all intails of the Duchy, or of any Land annexed thereunto are cut off, and by this made fee simple to E. 4. and his heirs Kings of England. In an Act of Parliament without question this limitation of a fee simple is good. See the whole Act.

c It is enacted that H. 7. should have, hold and enjoy to him and his<sup>\*</sup> heirs forevermore the County Palatine of Lancaster, and all Honors, &c. By which Act also all former intails are cut off, and in this state doth the Duchy stand at this day. d All Lands, &c. parcel of this Duchy given to the King by the Statute of Monasteries, Chantries are still within the survey of the Duchy. Within the County Palatine of Lancaster, the Duke having Jura Regalia, his Jurisdiction and Privileges therein were very great.

e The Duke of Lanc' complaineth by mouth to the King, Bishops, and Lords in full Parliament; That where after the death of Thomas of Lathome who held the Mannor of Lathome in the County of Lanc' of the said Duke in Chebage, whereby the Mannor was seised into the hands of the said Duke of Lancaster according to his County Palatine of Lancaster, yet notwithstanding John Stanley Knight as in the right of Isabel his wife, Daughter and Heir of the said Tho. had entered, and taken the profits of the said Mannor without any Livery or other suit made in the Chancery of the said Duke, for which he prayed remedy. After which, upon full advice of the Justices of both Benches, and others of the Kings learned Council, it was declared in the said Parliament, that the entry of the said John into the Mannor, as aforesaid, was unlawful, and that the said John ought to make suit by petition, or otherwise in the Chancery of the said Duke for the Livery of the said Mannor in such case to be sued for.

f Of the Franchises and Liberties belonging to the County Palatine of Lanc' you may read Rot. Par. 2 H. 5. Ubi supra.

g Lands to be annexed to this Duchy under the Great Seal shall be as good, as if it had been annexed by Parliament.

See the Statute of 5 El. cap. 23. concerning Writs of Significavit, and Excommunicato capiendo.

Lands within the County Palatine should pass by the Dukes Charter without livery of seisin or attornment, but of Lands parcel of a Mannor annexed to the Duchy without the County Palatine, there ought to be livery of seisin, and attornment of Tenants, and in the same degree is it in the Kings case. The reason hereof is, for that the County of Lanc' was a County Palatine, and the Duke then had Jura Regalia.

The proceeding in this Court of the Duchy Chamber at Westm. is as in a Court of Chancery for Lands, &c. within the survey of that Court by English bill, &c. and decrees; but this Chancery Court is not a mitt Court as the Chancery of England is, partly of the Common Law, and partly of Equity, as hath been said. See before in the Chapter of the Court of Chancery.

The proces is by Privy Seal, Attachment, &c. as in the Chancery.

The Officers of this Court be the Chancellor, the Attorney, the Receiver general, Clerk of the Court, the Auditors, Surveyors, the Messenger. There is an Attorney of the Duchy in the Chancery, and another in the Exchequer. There be four learned in the Law Assistants, and of Council with the Court.

Where by office a tenure is found of the King Ut de Ducatu Lancastrie, and in truth



truth it is not so, there needeth no traverse, for the King hath the Duchy \* as Duke and not as King, and a man shall not traverse, but where it is found † for the King : Sed aliter utitur in diebus nostris, as it appeareth in the case following.

\* *in hoc erratum est,*  
as it appeareth in  
Pl. Com. Ubi supra.  
† It is found for  
the King, for he  
is not Duke.

Le Roy (*in droit de son Duchie de Lanc'*) Seignior, Rich. Hulme seïsie del Mannor de Male in le Count' de Lanc' tenus del roy come de son dit Duchie per service de Chivalry Mesne, & Rob. Male (*seïsie des terres in Male tenus del Mesne come de son dit Mannor per service de Chivalry*) Ten'. Ri. Hulme morist; Apres que mort An. 31 H. 8. fuit trove que il morist seïsie del dit mesnaltie, & que ceo descend al Edmonde son fitz deins age, & trove le tenure avandit, &c. & durant le temps que il fuit in gard Rob. Male le ten' morist : apres que mort An. 35 H. 8. fuit trove per office que Rob. Male morist seïsie del dit tenancy per availle, & que ceo descend al son fitz & heir deins age, & que le dit tenancie fuit tenus del roy come del dit Duchy per service de Chivalrie (*ou in veritie ceo fuit tenus del Edm. Hulme adonques in gard in le roy come del dit mesnaltie,*) per que le roy seïsis le gard del heire le ten' & puis 4 Jac. Regis nunc apres le mort de Rich. Male que fuit lineal heire del dit Rob. Male, per un auter office trove fuit que le dit Rich. morist seïsie del dit tenancy, & ceo teignoit del Roy come de son Duchy per service de Chivalry son heire deins age, Sur ceo Rich. Hulme consin & heire del dit Rich. Hulme, ad preferre un bill destre admit a son travers de cest darrein office trove in An. 4 Jac. Le question fuit, le quel l'office trove in 35 H. 8. soit ascun estoppel al dit Hulme a traverser le darrein office, ou si le dit Hulme serra chasc primerment a traverser l'office de 35 H. 8. Et fuit object que il doit primerment travers l'office in 35 H. 8. come in le case de 26 Ed. 3. fol. 65. que si 2. fines sont levy de terre in anci-  
ent demesne, le Seignior de que la terre est tenus, doit aver briefe de discent a reverser le premier fine, & in ceo le 2 fine ne serra barre. Et que le premier office estoppera cy longe come ceo remaine in force. A que fuit respond & resolve per les 2 Chief Justices, & Chief Baron, & le Court de Gards, que le trover dun office nest pas ascun estoppel, car ceo nest que enquest office, & le party greve avera travers a ceo come ad estre confesse, & pur ceo sans question ceo nest pas estoppel; mes quant office est trove fausement que terre est tenus del Roy per service de Chivalry in capite, ou in verity la terre est tenus del auter Seignior, ou del Roy mesme in Socage, si le heire sua general livery, est tenus in 46 E. 3. 12. per Mowbray & Persey que il na-  
vera sute apres d'averre que la terre nest pas tenus del roy, &c. mes ceo nest forsque estoppel al heire mesme que sua la livery & ne concludera son heire : Car issint dit Mowbray mesme, expresment in antiel case in 44 Aff. pl. 35. que estoppel per suer de livery estoppera solement mesme le heire durant son vie : Et in 1 H. 4. fol. 6. b. la le case est myse de expresse confession & suer de livery per lissue in tail sur faux office, & la est tenus que les Jurors sur novel Diem clausit extremum apres le mort de tiel heire sont alarge solongne lour conscience a trover que la terre nest pas tenus, &c. car ilz sont jure ad veritatem dicendam, & lour trove est appel veredictum quasi dictum veritatis : quel reason auxi serve quant le heire in fee simple suist livery sur faux office que les Jurors apres son mort doivent trover solongne le verity, issint est dit in 33 H. 6. fo. 7. per Laicon que si 2 soers sont trove heires, dont l'un est bastard, silz joine in sute de livery, cesti que joine ove le bastard in livery ne alledgera bastardy in l'aut',

Hulmes case,  
Mich. 7 Jac. in  
Curia Ward. Tra-  
vers de office.  
Estoppel per suer  
de livery.

26 E. 3. fol. 65.

46 E. 3. 12.

44 Aff. pl. 35.  
1 H. 4. 6. b.

33 H. 6. fol. 7. per  
Laicon.



mes nul Livre dit que le stoppel indurer' plus longement que durant son vie. Et quant livery est sue per un heire, le force & effect del record de cest livery est execute & determine per son mort & pur ceo le estoppel expirer' ove le mort le heire; mes ceo est destre intend dun generall livery, car special livery ne concludera omnino, come appear apres. Les parols de generall livery, quant le heire est trove de pleine age, sont. Rex Escaetori, &c. Scias quod cepimus homagium I. filii & hæredis B. defuncti de omnibus terris & tenementis quæ idem B. pater suus tenuit de nobis in Capite die quo obiit, & ei terras & tenementa reddidimus. Et ideo tibi præcipimus, &c. eidem I. de omnibus terris & tenementis prædict', &c. plenam seisinam habere fac', &c. Et quant le heire fuit in gard a son plein age, le brieve de livery dirra. Rex, &c. Quia I. filius & hæres B. defuncti, qui de nobis tenuit in capite, ætatem suam coram te sufficient' probavit, &c. cepimus homagium ipsius I. de omnibus terris & tenementis quæ idem B. pater suus tenuit de nobis in Capite die quo obiit, & ei terras & tenementa reddidimus: Et ideo tibi præcipimus, ut supra. Quel brieve est le sùte del heire & pur ceo coment que tous les parols del brief sont les parols le Roy (come tout les briefs le Roy sont) & coment que le brief de livery est general, de omnibus terris & tenementis de quibus B. pater I. tenuit de nobis in capite die quo obiit, sans direct affirmac' que ascun Mannor in particuler est tenu in capite, & nien obstant que ceo nest forsque prosecution dun brief le Roy, & nul judgment sur ceo, uncore intant que generall livery est foundue sur loffice, & per loffice fuit trove que divers terres & tenements fuer' tenu del Roy in capite, a cest cause le fuer de cest brief concluder le heire solement que fust le livery, & apres son mort les Jurors in novel brief de Diem clausit extremum sont alarge, come est avandit, & si cesti Jury trove fausement tenure del Roy, auxi le Seignior de que la terre est tenu poe travers cest office, ou si terre soit tenu del Roy, &c. in Socage, le heire poe travers cest darrein office. car per ceo il est greve solement, & ne travers le primer office, & quant le pier fust livery & mort, le conclusion est execute & past come est dit adevant. Et nota, la est un special livery, mes ceo procede de grace le Roy, & nest pas sùte le heire, & le Roy poe grant ceo ou al plein age devant ætate probanda, &c. ou al heire deins age come appiert in 21 E. 3. 40 & ceo est general, & ne affirm directment ascun tenure come le general livery fist, mes ove un, ut dicitur, & pur ceo nest ascun estoppel sans question. Et al common ley speceal livery poe aver estre grant devant ascun office trove, mes ore per lestatut de 33 H. 8. ca. 22. est purvien, That no person or persons having Lands or Tenements above the yearly value of 5 l. shall have or sue any livery before Inquisition or Office found before the Escheator or other Commissioner, mes per un expresse clause in mesme la cte, livery may be made of the Lands and Tenements comprised or not comprised in such offices. Issint si office soit trove dascun parcell, &c. ceo suffist, & si le terre trove, in loffice nexcede 20 l. donques le heire poe fuer general livery apres office ent trove, come est avandit; mes si la terre nexcede 5 l. per annum, donques general livery poe estre sue sans office ent trove per garrant del Maister de gards, &c. Vid. Dier 23 El. 377. que le Roigne, ex debito Justitiæ, nest ly a cest jour puis le dit Añ de 33 H. 8. a graunter special livery, mes est a son election a grant special livery, ou a chafer le heir a un general livery.

Fuit

21 E. 3. 40.

46 E. 3. 33.

46 Ass. p.

47 E. 3. 21.

29 Ass. p. 8.

33 H. 6. 50.

21 H. 6. 28.

37 H. 8. B. Estoppel

218. 7 E. 6. Ibid.

222.

See 4. part Inst.

Cap. Pardon.

Mich. 39 &amp; 40

El. fol. 397.



*Fuit auxi resolve in cest case que loffice de 35 H. 8. ne fuit pas traversable, car son travers demesne provera que le Roy aver' cause d'aver gard per cause de gard, & quant le Roy vient al possession per faux office ou aut' meane sur pretence dun droit, ou in verite il nad tiel droit, uncore si appiert que le Roy ad ascun auter droit ou interest a aver & tener la terre, la nul traversera cest office ou tittle le Roy, pur ceo que le judgment in le travers est, Ideo consideratum est quod manus Domini Regis a possessione amoveantur, &c. Que ne doit estre quant appiert al court que le Roy ad droit ou interest d'aver la terre, Et ove ceo accord. 7 H. 4. fol. 33. in le Countee de Kents case; & que apres general livery sue per le heir de Robert Male le office ne poet estre traverse per son heir: Et issint auxi fuit resolve per lassistants del court de Gards in Scurfields case in Curia Wardorum. Tr. 8 Jacobi.*

Which case we have rehearsed in the same language wherein we reported it when it was fresh in memory, and never hitherto was published.

What Leases may be made of lands, &c. within the surbey of the Duchy of Lancaster; See the Ordinances of the Court of Duchy concerning Leases to be made, &c. Anno 20 H. 6.

See also Dier Mich. 6 & 7 Eliz. the resolution of all the Judges concerning Leases made by the Chancelor of the Duchy Chamber. And if the Lease either in possession or reversion be made under the Duchy Seal, Quod Dominus Rex de advisamento & assensu concilii Ducatus Lancastrie dimisit, &c. the Lease is good, although in truth the Chancelor made it, and put to the Seal of the Duchy. For such Leases in the Duchy Seal, or under the Seal of the County Palatine of lands within the same, are of as great force as lands of the Crown under the Great Seal.

Mich. 6 & 7 Eliz. Dier 232.  
27 H. 8. cap. 11:  
2 Provisoes.  
2 & 3 Ph. & M. cap. 20.  
37 H. 8. cap. 16.

Albeit by special provision and construction, to a grant of lands and tenements parcel of the Duchy of Lancaster that lye out of the County Palatine, there must be livery of seisin and Attornment, as the case requireth, yet the grant under the Seal of the Duchy is matter of Record in respect of the dignity of the person of the King, and needeth no delivery to make it a deed (as deeds between subjects ought to have) and if the same be denied, Non est factum cannot be pleaded, but Nul tiel Record.

21 E. 4. fol. 60.  
Rot. Parl. 1 H. 4. nu. 81.  
Vide Cartam H. 4. de seperatione Duc. Lanc. a Corona auctoritate Parl. Anno Regni sui 1.

And if the King by his Letters Patents under the Seal of the Duchy doth grant a reversion expectant upon an estate for life or years of lands parcel of the said Duchy lying out of the County Palatine, the reversion doth pass inattendant to the Patentee by force of the Letters Patents: but he shall not have an Action of Waste or distrain before Attornment. \* For this case is like to the case of a fine between subjects, which is matter of record: and so the Kings Letters Patents under the Duchy Seal are as high a matter of record (if not higher then a fine.) And this tendereth both to the honor of the King and the safety of such as purchase such reversions of the King, that the state of the reversion should pass by those Letters Patents: otherwise if the Patentee dye before Attornment the Letters Patents should be void, and the validity of the Kings grant should depend upon the pleasure of the lessee, and many inconveniencies should thereupon follow. And all this appeareth by that great and grave resolution of the case of the Duchy of Lancast' reported by Dr. Plowden, that no statute now in force doth separate the Duchy from the person of the King, nor to have the person of the King separate from the Duchy, nor to make the King Duke of Lancaster having regard to the possessions of the Duchy, nor to alter the quality of the person of King H. 7. but only that the King should have to him and to his Heirs the said Duchy separate from the other possessions; in which case the Duchy at the least is joyned to the person of H. 7. and to his Heirs, and the person of the King remain as it did before, for nothing is said to the quality of the person of the King, nor to the alteration of his name. And the person of the King shall not be infeebled because the Duchy is given to the King & his Heirs, but remain always of full age, as well to gifts & grants by him made, as to administration of Justice: Whereupon it was resolved, that Leases made by E. 6. being

Rot. Parl. 3 H. 5. nu. 15.  
Rot. Parl. 1 E. 4. nu. 26.  
Rot. Parl. 1 H. 7. nu. 2. Sess. 1.  
2 & 3 Ph. & Mar. cap. 20.  
P. 10 H. 4. fol. 7. non omittas, &c. per prerogat.  
Rot. Parl. 2 H. 5. nu. 30.  
23 H. 6. nu. 17.  
12 E. 4. nu. 7, 8.  
Dier Mic. 6 & 7. Eliz. ubi supra.  
\* Lit. Sect. 580.  
1 part of the Inst. fol. 320.  
Plowd. Com. 221. b.  
Vide Rot. Parl. 1 H. 4. nu. 81. accord.



being within age of lands, either within the County of Lancaster or without parcel of the Duchy (the Royal and politic capacity of the King being not altered) were not voidable by his nonage: A just resolution, and tending to the safety and quiet of Purchasers and Farmors; and proveth directly that the Royal and politic capacity of the King being not altered (as to these possessions) the Letters Patents of the King of these possessions under the Duchy Seal are of Record: and we find no opinion in our Books, or any thing in any Record, that we remember, against this. So as the Law concerning this point is, That for grants of reversions by Letters Patents under the Kings Seal of the Duchy of Lancaster, there must be Attornment for lands out of the County Palatine to make a privy, as in case of a fine for the action of waste or distress: but of

Vid. 27 H. 8. c. 11. for the several Seals. 23 H. 8. c. 3. Com' of Sewers under the seal of the Duchy and they be Commissioners of Record.

27 H. 8. cap. 16.

Dier ubi supra.

Pl. Com. 222.

lands within the County Palatine, the reversions pass by Letters Patents under the Seal of the County Palatine, both for the estate and for the privy of the action and of the distress: and yet the Seal is as high a matter of Record in the one case as in the other. And herewith agreeth the continual practise in the Court of the Duchy of Lancaster. For if a reversion be granted under the Duchy Seal in fee or in tail, &c. of the lands of this Duchy expectant upon a Lease for years, life, &c. a Writ in English is usually granted in the Kings name under the Duchy Seal reciting the grant, and commanding the particular Tenant to attorn: or if it be of a Pannor in possession, a Writ likewise in English is usually granted commanding the Tenants generally to attorn.

The Seal of the Duchy of Lancaster remains with the Chancellor at Westm. And the Seal of the County Palatine remains always in a Chest in the County Palatine under the safe custody of the Keeper thereof. All grants and leases of Lands, Tenements, Offices, &c. in the County Palatine of Lancaster shall pass under that Seal and no other: and all grants and leases of Lands, Tenements, Offices, &c. out of the County Palatine and within the survey of the Duchy, shall pass under the Seal of the Duchy, and no other: otherwise such grants and leases shall be void by the apparent intention of the Act.

See also Pl. Com. 222. notable matter concerning leases made of lands within the Survey of this Court, the King being within age, &c. resolved and decreed to be good.

This County Palatine was the youngest brother, and yet best beloved of all other, for it had more Honors, Pannors, and Lands annexed unto it, then any of the rest, by the House of Lancaster, and by H. 8. and Queen Mary, albeit they were descended also of the House of York, viz. from Eliz. the eldest Daughter of E. 4.

\* Royalties, Franchises, Liberties, &c.

Rot. Parl. 2 H. 5. n. 30. not in print, and established and confirmed, Rot. Parliam. An. 3 H. 5. nu. 15.

\* For the great Royalties, Franchises, Liberties, Privileges, Immunities, Quietances, and Freedoms, which the Duke of Lancaster had for him and his men and tenants, see Rot. Parl. die Lunæ post Octab. Sancti Maritini An. 2 H. 5. all which are established, ratified and confirmed by authority of Parliament, necessary to be known by such as have any of these possessions.

## CAP. XXXVII.

## Of the County Palatine of Chester.

**S**EEING the erection of the County Palatine of Lancaster hath reference to the County Palatine of Chester, we have thought good to entreat of it in this place, for that one giveth light to the other.

*a* We have spoken of the County of Lancaster raised to a County Palatine by Act of Parliament. We shall now speak of a County Palatine created by prescription.

*b* We find that Hugh Lupus son of the Viscount of Averanches in Normandy by his wife William the Conquerors Sister was the first hereditary Earl of England created by his Uncle the Conqueror Earl of Chester, and in the stile of a Conqueror, Totumq; hunc comitatum tenendum sibi & \* hæredibus ita libere ad gladium, sicut ipse Rex tenebat Angliam ad coronam, dedit. † To this Earldom is annexed the County of Flint in Wales.

This is the most ancient and most honorable County Palatine remaining in England at this day,\* with which dignity the Kings eldest son hath been of long time honored.

By this general grant this Hugh Earl of Chester had Jura regalia within the County, and consequently had Comitatum Palatinum without any express words thereof, and by force thereof he created Eight Cheshire Barons, which was the first visible mark of a County Palatine. That is to say, Robert Fitz-Hugh Baron of Malpas, Richard de Vernon Baron of Scibbroke, William Walbank Baron of Nantwich, William the son of Nigel Baron of Halton, Hamond de Mailly Baron of Dunham, Gislebert de Venables Baron of Kinderton, Hugh the son of Norman Baron of Hawardyn, and N. Baron of Stockport.

By the said general grant he had not the patronage and tenure of the Bishoprick of Chester, for thus I read in the Book of Domesday made in the time of this Hugh Earl of Chester. Cheshire. Tenet Episcopus ejusdem civitatis de Rege, quod ad eum pertinet Episcopatum; totam reliquam terram comitatus tenet Hugo Comes de Rege.

*c* Britton saith, Voilons nous que Justices Errant soient assignes de les Chapters oier & terminer en chescun Countye, & en chescun Franchise de 7 ans en 7 ans, & autiel poer voilons que nous *d* Chief Justices de Ireland & Cestre eyent.

*e* Within this County Palatine, and the County of the City of Chester, there is, and anciently hath been a principal Officer called the *f* Chamberlain of Chester, who hath, and time out of mind hath had the jurisdiction of a Chancelor; and that the *g* Court of Exchequer at Chester is and time out of mind of man hath been the *h* Chancery Court for the said County Palatine, whereof the Chamberlain of Chester is Judge in equity. He is also Judge of matters *i* at the Common Law within the said County, as in the Court of Chancery at Westminster. for this Court of Chancery is a *k* mixt Court.

There is also a *l* Vice-chamberlain, which is the Deputy of the Chamberlain. And there is within the same a Justice called *m* the Justice of Chester, who hath jurisdiction to hear and determine matters of the Crown, and of Common Pleas. Of fines and recoveries levied and suffered as well within the County Palatine of Chester as of the City of Chester. See the Statutes of 2 E. 6. cap. 28. & 43 Eliz. cap. 15. But of these and other matters concerning this County Palatine we have thought good to set down the resolution of four reverend Judges (whom we knew) upon view of Records and evidences, and mature deliberation thereupon in writing, in these words.

13 E. 3. Vouch. 18.  
49 E. 3. 9. 19 H. 6.  
12. 36 H. 6. 33, 34.  
12 E. 4. 16.

*a* A man may have a County Palatine by prescription.

2 E. 4. 17, 18, 22.  
12 E. 4. 16. 21 R. 2.  
c. 9. Register. 17. a.

*b* This Lupus did bear AZUR a head of a Woolf crased, argent.

\* In fee simple.

† 21 R. 2. cap. 9.

\* 21 R. 2. cap. 9.

17 E. 4. cap. 1.

These Barons had within their several Courts conu-fans de omnibus placitis & querelis in Curia Comitatus, exceptis placitis ad gladium ejus pertinentibus, which you may see at large, Rot. Inspec. Pat. An. 18 H. 6. parte 2.

m. 34.

*c* Brit. f. 1. b.

27 H. 8. cap. 5.

*d* Chief Justice de Chester.

*e* 27 H. 8. cap. 5.

*f* Chamberlain of Chester.

*g* Court of Exchequer.

*h* Chancery Court.

*i* At the Common Law.

*k* A mixt Court.

*l* Vice-chamberlain.

*m* The Justices of Chester.



Sir James Dier,  
Weston,  
Harpur,  
Carns.  
10 Feb. 11 Regi<sup>næ</sup>  
Elizab.

The opinion of Sir *James Dier* Knight, Chief Justice of the Common Pleas, at *Westminster*, *Richard Weston* and *Richard Harpur* Esquires, two other Justices of the same Common Pleas, and of *Thomas Carns* Esq; one of the Justices of the Pleas to be holden before the Queens Majesty, declared and presented to her Highness the 10 day of *February Anno Dom. 1568.* by vertue of her Majesties Letters to us directed the second day of the same moneth concerning the jurisdiction and liberties of the County Palatine of *Chester*, and the authority of the Chamberlain, and his Office there: and concerning the controversie between the Lord President and Council in *Wales*, and the said Chamberlains Office lately grown upon *Thomas Radfords* case exhibited unto us: as ensueth.

King H. 7. made  
it a County of it  
self. Cand. 459. a.  
\* Ey prescription.

First, By that which we have seen and considered, the County of Chester (wherein the City of Chester is now, and by a good time past hath been a County of it self) of \* very ancient time before the Reign of King H. 3. hath been, and yet is a County Palatine, with other members thereunto belonging: and so from time to time hath been received and allowed in the Law. And therefore the Laws, rightfull usages, and customs of the said County Palatine are to be preserved and maintained.

The Chamberlain  
of Chester.

It further evidently appeareth, that by the like time of antiquity and continuance, there hath been and yet is in the said County Palatine one principal or head Officer called the Chamberlain of Chester, who hath, and ever had all jurisdictions belonging to the office of a Chancellor within the said County Palatine.

The Justice of  
Chester.

And that there is also within the said County Palatine a Justice for matters of the Common Pleas, and the Pleas of the Crown, to be heard and determined within the said County Palatine, commonly called the Justice of Chester.

Error, for rein plea  
& foreign voucher.

We also see that all pleas of lands or tenements and all other contracts, causes, and matters rising and growing within the same County Palatine are pleadable, and ought to be pleaded, heard, and judicially determined within the said County Palatine, and not elsewhere out of the said County Palatine: And if any be pleaded, heard, or judged out of the said County Palatine, the same is void, and coram non Iudice, except it be in case of Error, Foreign plea, or Foreign voucher.

Treason and error

We also see that no inhabitant of the same County Palatine by the liberties, Laws, and usages of the said County Palatine ought to be called or compelled by any Writ or Proces to appear or answer any matter or cause out of the same County Palatine for any the causes aforesaid, but only in causes of treason and error. And the Queens Writ doth not come, nor ought to be allowed or used within the said County Palatine, but under the Seal of the said County Palatine, except Writs of Proclamation by the Statute of E. 6. An. Regni sui primo.

Seal of the County  
Palatine.

Court of the Ex-  
chequer is the  
Chancery Court.  
Chamberlain  
Judge of that  
Court.  
A Conservator of  
the peace.

It doth further appear unto us by good matter of Record to us shewed, that the Court of the Exchequer at Chester is, and by the time of antiquity and continuance aforesaid hath been used as the Chancery Court for the same County Palatine, and that the Chamberlain of Chester is the chief officer and Judge of that Court, and that he is, and time out of mind hath been a conservator of the peace by vertue of the same office, and hath like power, authority, preeminence, jurisdiction, execution of Law, and all other customs, commodities and advantages pertaining to the jurisdiction of a Chancellor within the said County Palatine of Chester, as the Chancellor of the Duchy of Lancaster hath used, had and ought to have used and executed within the said County Palatine of Lancaster: which more evidently appeareth also by the understanding of the first grant made by King E. 3. to John his son then Duke of Lancaster, whereby he made the same County Palatine of Lancaster, referring the said Duke to have his Chancellor, liberties, and regal jurisdiction to a County Palatine belonging, adeo libere & integre, sicut Comes Cestrie intra eundem Comitatum Cestrie dignoscitur obtinere.

See the grant be-  
fore.

Vice-Chamberlain

Also it appeareth unto us that the Vicechamberlain did lawfully and orderly commit to prison Thomas Radford named in the case presented unto us, for that he



he refused to put in sureties of the peace within the said Exchequer upon Affidavit made in that behalf. And that the proceedings of the Council of the Marches touching the enlargement of the said Radford from the said imprisonment, and also their further order and dealing against the said Vicechamberlain was, and is without sufficient authority, and contrary to the Jurisdiction of the office of the said Chamberlain, and the ancient Laws and Liberties of the same County Palatine.

Council of the Marches.

And we do also affirm that the Statute of 34 and 35 H. 8. called the Ordinances of Wales, whereby the authority of the Lord President and Council within the Dominions and Principality of Wales and Marches of the same is established and hath the force of a Law, for or concerning the determination of causes and matters of the same, comprehendeth not the Counties of Chester, and the City of Chester, because the same Counties of Chester and the City of Chester be no part nor parcel of the said Dominion or Principality of Wales, or of the Marches of the same.

The President and Council of Wales, and the Marches of the same.

The Counties of Chester, and the City of Chester no part of the Marches of Wales.

Hil. 11 Jac. in the Chancery.

Between Sir John Egerton Plaintiff, and William Earl of Derby Chamberlain of Chester and others Defendants, for the trust of an interest of a term in Lands in the County of Chester, these points were resolved by the Lord Chancellor, and by the Chief Justice of England, Justice Dodderidge, and Justice Winche, whom the Lord Chancellor called to be his Assistants as followeth.

First, that the Chamberlain of Chester being sole Judge in Equity, or his Deputy, cannot decree any cause wherein he himself is party, for he cannot be Judex in propria causa, but in that case he may complain in the Chancery of England.

Vid. in the Character of Durham. Anno 30 E. 1. Coram rege.

Vide 21 H. 3. breve 881. in rationabili parte versus Comitem Cestrie de hereditate D. quondam Comit' Cestrie. Comes dicit quod noluit respondere de terra in Com' Cestrie ubi brevia domini regis non currunt extra libertates suas nisi Cur' consideret, & Consideratum fuit per curiam quod respondeat.

21 H. 3. br'e 881.

2. If the Defendant dwell out of the County Palatine, if any of the County Palatine have cause to complain against them for matter of Equity for Lands or Goods within the County Palatine, the Plaintiff may complain in the Chancery of England, because he hath no means to bring them to answer, and the Court of Equity can bind but the person, for otherwise the Subject should have just cause of suit, and should not have remedy: and when particular Courts fail of Justice, the general Courts shall give remedy, ne Curie regis deficerent in justitia exhibenda.

18 Aff. 382.  
13 E. 3. tit. Jurisd.  
5 E. 3. 30. 38 H. 6.  
6. 7 H. 6. 37.  
8 E. 4. 8. 11 H. 4.  
27. &c.

3. It was resolved, that the King cannot make any Commission to hear and determine any matter of equity, but matters of equity ought to be determined in the Court of Chancery, whose jurisdiction therein have had continual allowance, and so was it resolved in \* Perots case.

\* See this case in the Chapter of the Chancery, pa. 87.

4. Upon consideration had of the said Certificate of the Lord Dier, and the said other Judges, it was resolved, that for things transitory though in truth they were emergent within the County Palatine, yet by the general rule of law, the Plaintiff may alledge these to be done in any County where he will, and the Defendant cannot plead to the Jurisdiction of the Court, that they were done, &c. within the County Palatine: but if the Plaintiff suppose the transitory cause of action to be in the County Palatine, that may be pleaded to the Jurisdiction, otherwise it is of things local.

See in the Chapter of the County Palatine of Durham.

An office found by Commission in the nature of a Mandamus issuing out of the Chancery at Westminster before the Commissioners in Com' Cestrie for Lands holden in Capite in the same County, was holden void per consilium curie Wardorum, for it ought to be by Writ or Commission out of the Exchequer in the County Palatine, which is the Court of Chancery there.

If an erroneous Judgment be given before the Chamberlain in the Exchequer in any matter wherein he proceedeth according to the course of the Common law, the writ of Error shall be directed Camerario seu ejus locum tenenti; but if the Judgment be given before the Justice of Chester, then the Writ is directed

J f

Justiciario



Regist. fo. 17. a.  
34 H. 6. 42.  
6 H. 4. 9. Lib. Intr.  
Rast. 272.  
Dier 15 El. 320,  
321. Dier 18 El.  
345, 346.  
\* Note these general words extend as well to the Chamberlain as to the Justice by the rule of the Regist. Ubi sup.

Justiciario Cestrie five ejus locum tenenti. And note that in a Writ of Error to the \* County of Chester, day shall be given by so long time, that thre Counties may be holden before the return of the same Writ in the Kings Bench, which is four months, by which time the Justices or Lieutenant within the same County may redress the error, if they will, and this by the usages of the same County; But in a writ of Error upon a fine they have no such power: and the Plaintiff ought to bring the writ of Error to the next County after the Teste, and there it shall be read, Coram Judicatoribus ratione enurarum suarum ibidem: and the Plaintiff shall assign the Error without praying process against the Tenant or Defendant, but only to pray Judicatores to examine the Error, and if Error be found they may advise thereon, or presently reform it, and award restitution, or by their discretion they may award process returnable at the next County against the Tenant or Defendant ad audiend' errores, (which is reasonable, and necessary to be granted) and so return their own judgment given by them or their Predecessor, and then there is an end of the business, and the Record shall remain there without removing; and by this means they shall save an hundred pound forfeiture to the King. But if they affirm the judgment which is erroneous, their affirmation and the Record ought to be removed into the Kings bench, if the party Plaintiff be grieved therewith: and if their affirmation be erroneous, although their first judgment was given by their Predecessors, notwithstanding they shall forfeit the hundred pounds. And the party grieved by their affirmation or reversal ought to bring a special Writ of Error peremptory, which shall not be examined by them, for that all this is to be understood where Error in Law is assigned: for upon the Writ of Error first brought, if any Error in fact be assigned, as death of one of the parties, hanging the plea, or the like, which is triable by the Country, they cannot hold plea thereof, but return the Record, with the Writ into the Kings Bench. Neither can they hold plea of a release of Errors after the Judgment or the like, for they are only to examine the errors of the Record or Process, and all this doth notably appear in our books. But if no such usage had been, the Record ought to have been removed by the Writ of Error into the Kings Bench, as it ought to be in other cases.

Hil. 29 Eliz.

Egerton the Queens Solicitor moved in the Chancery to have a Certiorari to the County Palatine of Chester for the removing of a Record of Assise taken in that County between Cotton and others Plaintiffs, and Venables and others Defendants, wherein the Recognitors of Assise gave a false verdict, and to the intent that a Writ of Attaint might be brought in the Kings Bench, a Certiorari was prayed. And it was doubted, whether an Attaint did lie in this case, out of the County Palatine. And by the opinion of Wray and Anderson Chief Justices, and Manwood Chief Baron, upon consideration had of the Statute of 23 H. 8. cap. 3. whereby it is enacted in these words, That all Attaints hereafter to be taken shall be taken before the King in his Bench, or afore the Justices of the Common Pleas, and in no other Courts; They resolved and so certified the Lord Chancellor, that for a false verdict given in the County Palatine of Chester, the Attaint ought to be brought either in the Kings Bench or Common Pleas, and not in the County Palatine of Chester, and thereupon a Certiorari was granted for the removing of the Record.

Vid. 3 Eliz Dier  
202. b. Benloes  
Rep. 3 Eliz.

Hil. 29 El. Coram  
rege, Huddlestons  
case, in Brevi de  
errore.

Hil. 29 Eliz. Coram Rege. The case was that Queen Elizabeth by her Letters Patents granted the custody of the Castle of Chester to John Paston, and Richard Huddleston Esquires, and the survivors of them; John Paston died, and in a Scire facias against Huddleston in the Exchequer before the Chamberlain, (Glacier then being Deputy Chamberlain) to repeal the said grant, &c. judgment was given against Huddleston that the Patent should be annulled and cancelled; and hereupon Huddleston brought his Writ of Error. And it was objected that before any Writ of Error ought to have been granted, Huddleston ought to have sued to the Queen by petition to have a Writ of Error according to the book in 23 E. 3. fo. 24. But it was answered, that here in this case no inheritance was recovered by the Judgment, and if Huddleston that claimed the office

23 E. 3. fo. 24.  
F. N. B. fo.



office but for term of his life should be driven to his petition, wherein great delay might be used, his life might end before he could obtain his Writ of Error, therefore the Writ of Error in this case was to be granted without any petition: and of that opinion was the whole Court of Kings Bench, and so the Writ of Error did stand.

Judices & Sēdatores Cōm Cestrīe non consueverunt apponere sigilla sua alicui recordo in presentia Justiciariorum. Pasch 9 E. 2. Cōram rege Rot. 32.

Before the Statute of 34 H. 8. neither the County Palatine of Chester sent Knights to the Parliament, nor Citizens out of the City of Chester. 34 H. 8. cap. 13.

Before the Statute of 27 H. 8. the Lord Chancellor of England appointed no Justices of Peace, Justices of Quorum or Gaol delivery within the County of Chester. 27 H. 8. cap. 5.

The Manor of C. in the County of York was holden of the Prince, as of the County of Chester, and that all pleas real and personal rising within the County, or within any parcel of Land holden of the County ought to be impleaded within the said County Palatine: For the King by his Letters Patents may ordain a Court at York, or in any other County which shall have Jurisdiction through the whole Realm, and so it was resolved. 22 E. 4. Jurisd. 6r. Lib. Int. Rast. fo. Si teneatur immediate or mediate.

The City of Chester was made a County of it self by King H. 7. by Letters Patents, dat. 6 Aprilis 21 of his Reign. Lit. Pat. 6 April. 21 H. 7.

See the Statute of 5 El. cap. 23. Concerning Writs of Significavit and Excom' capiend'. See the Statute of 18 El. cap. 8. making of more Justices then one. 5 El. cap. 23. 18 El. cap. 8.

By the Statute of 8 H. 6. cap. 10. it is provided, That upon every Indictment or Appeal by which any person dwelling in any other County then there where such Indictment or Appeal is, or shall be taken of Treason, Felony, and Trespas, &c. before any Exigent awarded, &c. that after the first Writ of *Capias*, another Writ of *Capias* shall be awarded directed to the Sheriff of the County whereof he is or was supposed to be conversant in the Indictment, &c. otherwise the outlawry to be void. 8 H. 6. cap. 10. Vide cap. 13.

In an Appeal in the Kings Bench in the County of Dorset where the Appellā was demurrant at Chester, proces continued until he was outlawed without any *Capias* into Chester, and it was objected that the *Capias* could not issue into Cheshire, for it is a Franchise into which the Kings Writ runneth not. Holden at the Common Law for certain things a Writ shall issue to the Franchise of Chester, as for Treason, and the Statute is made by Authority of Parliament, and is general as well within Franchise as without, and therefore the Act being general shall be taken generally to extend into Chester, Quod conceditur, but this is a leading case. 19 H. 6. 1. 2.

Vid. Lib. Int. Coke, fo. 230, 231, 232. & 296, 297. See an Act of Parliament, Rot. Par. 9 H. 4. nu. 45. touching adjournment in pleas.



## C A P. XXXVIII.

*Of the County Palatine of Durham.*

10 E. 3. 41.  
 12 E. 3. Vouchce  
 115. 17 E. 3. 36.  
 5 R. 2. Trial 54.  
 13 H. 4. Vouchce  
 39. 11 H. 4. 40.  
 18 H. 6. 33, 34.  
 19 H. 6. 12. 52.  
 21 E. 4. 8. 1 Mar.  
 Stat. 2. ca. 2.  
 Rot. Par. 11 H. 6.  
 nu. 23.  
 See Rot. Parl.  
 Pasch. 21 E. 1.  
 Rot. 5. a notable  
 Record for the li-  
 berties of the Bi-  
 shop of Duresme.

**T**his is also a County Palatine by prescription parcel of the Bishoprick of Durham, which was first raised, as it is said, soon after the time of William the Conqueror.

Yet I find that this County Palatine hath been questioned (but with evil success.) For at the Parliament holden Anno 11 H. 6. Thomas Bishop of Durham prayed a Commission under the Great Seal to certain there named, who by vertue thereof sat and inquired at Hartlepole being within his County Palatine of the rights of the County Palatine with all the Dependents. Whereupon Sir William Eure Knight, the Kings Attorney, made divers objections, that the Bishop ought to have no County Palatine, neither liberties Royal. On the contrary part the Bishop produceth his proofs, and the matter on both parts seriously debated. In the end Judgment was given in Parliament for the Bishop, and that the said Inquisitions returned in the Chancery or elsewhere, should be void. See the Record, being very long, and yet worthy the reading.

When the Bishop himself, that ought to do justice and right to others, will do injury and wrong within his County Palatine, and that he cannot be a Judge in his own cause: See a notable Record intituled thus. Recordum coram domino rege porrectum per manus Willielmi de Bereford & Rogeri de Heigham Justiciar domini regis ad querelas infra libertatem Episcopatus Dunelm' audiend' & terminand' assignat in hæc verba.

Pasch. 30 E. 1.

Placita apud Dunelm' coram Willielmo de Bereford & Rogero de Heigham Justiciariis domini Regis ad veteres querelas Ricardi Prioris Dunelm' & aliorum hominum Episcopatus ejusdem domini regis prius porrectas & non determinatas audiend' & terminand' assignat.

Northumb.  
 Dunelm.

\* This was Anthony Beak, of that state and greatness as never any Bishop was, Woolsey excepted.

Ricardus de Hoton Prior Dunelm' queritur de \* Anthonio Episcopo Dunelm', &c. The Record is long, but therein you shall observe several complaints of the Prior against the Bishop, whereupon issues are joined, and verdict given against the Bishop, and Judgments given worthy the reading. By which Record it appeareth that the Bishop had within the County of Duresme Regalitem suam.

I find also another Record in the same Kings time, viz.

Mich. 34 E. 1.  
 Coram rege  
 Rot. 32.

Placita coram domino rege apud Westm' de Termino Sancti Michaelis Anno regni Regis E. filii Regis Henrici 33. finiente, 34. Ro. 32.

*Dominus Rex mandavit breve suum Episcopo Dunelm' in hæc verba, Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ venerabili in Christo patri A. eadem gratia Episcopo Dunelm. Salutem. Cum Odeliva filia Richardi de Hurcheworth, Matild. de Swineburne, & Richardus Bouche, & Agnes uxor ejus arraniaverunt quandam Assisam mortis antecessoris infra libertatem vestram Episcopatus predicti, \* coram Lamberto de Trykingham, Guyehardo de Charoun, & Petro de Thoresby per breve vestrum versus Galfridum fil' Johannis le Maschun de Herterpole de uno mesuagio, sex toftis & una carucata terræ cum pertin. in Hurcheworth Brian. Ac predictus Galfridus Johannem le Maschun de Herterpole intrinsecum versus predicti. Odelivam, Matildam, Ricardum & Agnet'*

*inde*

\* Justices of the Bishop.  
 Per breve vestrum.



inde vocaverit ad warrant'. Et idem Johan' ten' præd' eidem Galfrido warrantizans Simon' filium Simon' de Mora intrinsecum versus eosdem Odalivam, Matild', Ricard' & Agnet' ulterius inde vocaverit ad warrant'. Ac idem Simon' eadem ten' eidem Johan' warrantizans inde vocaverit ad warrant' versus eosdem Odelivam, Matild', Ricard' & Agn' per auxilium cur' nostræ Aymerum de Rocheford & Julianam uxorem ejus, Johan' Swayne, & Aviciam uxorem ejus, & Tho. de Fishborn juniorem forinsecos, qui terras aut tenementa infra libertatem prædict' aut alibi infra districtionem vestram non habent, per quæ per ballivos vestros libertatis prædict' ad warrant' illam faciend' distringi possunt, ut accepimus. Nos attendentes expediens esse & necesse quod nos super recordo & processu Assise prædictæ plenius certioremur, ut partibus prædictis, quod justum fuerit in hac parte ulterius fieri faciamus. Vobis mandamus quod inspectis recordo & processu præd', si vobis constiterit ita esse, tunc recordum & processum Assise prædict' cum omnibus ea tangentibus nobis sub sigillo vestro distincte & aperte mittatis & hoc breve, Ita quod ea habeamus a die S. Michaelis in 15 dies ubicunque, &c. partibus eundem diem præfigentes quod sint ibi statur' & receptur' quod Curia nostra consideraverit in hac parte, ut nos finito placito warrant' prædict' in Curia nostra record' & proces' totius negotii memorati vobis remittamus ad procedend' in eodem secundum legem & consuetudinem libertatis prædict'. T. me ipso apud Wynelingfeld 13 die Julii Anno Regni nostri 33. Virtute cujus brevis prædict' Episcopus misit recordum & processum in hæc verba. Placita de Assis apud Dunelm' coram Guyehardo de Charroun & Petro de Thoresby Justiciar' assignat', associat' sibi L. de Trikingham die Martis proximi post clausum Pasch. Anno Regni Regis E. 33. & promot' Domini A. Dunelm' Episcopi 22.

Forcin Voucher.

Si vobis confliterit ita esse.

Assis venit recognitur' si Ricard' de Hurcheworth pater Odelivæ fil' Ric' de Hurcheworth & avus Matildæ de Swinesburne, & Agn' uxor' Richardi Bouche fuit seistus in dominico suo ut de feodo de uno mesuagio, sex toftis & una carucata terræ cum pertin' in Hurcheworth Brian die quo, &c. Et si, &c. quæ Galfrid' fil' Joh' le Maschun de Herterpoole. Et sciendum quod tertia pars præd' tenement' excipit' eo quod præd' Odeliva alias comparuit in Curia, & modo non sequitur pro parte sua, &c. Et Galfrid' alias venit & dixit, quod ipse tenet prædicta tenementa ad terminum vitæ suæ ex dimissione Johan' de Maschun de Herterpoole & in forma prædicta vocavit ipsum Johan' ad warrant' Simon' fil' & heredem Simonis de Mora, qui modo venit per sum' & ei warrantiz'. Et vocat ulterius inde ad warrant' per auxilium Cur' hic & Cur' Domini Regis Aymerum de Rocheford & Julianam uxorem ejus, filiam & unam heredum Nicholai de Swinburne, Johan' Swaine & Aviciam uxorem ejus filiam & alteram heredem prædicti Nicholai, & Thomam de Fishburne filium Christianæ cohered' prædict' Julianæ & Aviciæ sum' in Com' Northumbr'. Et quia Curia ista jurisdictionem in prædict' Aymero & aliis warrant' &c. qui exec' datus est dies partibus hic die Martis proximi post festum Sancti Jacobi Apostoli. Et dictum est prædicto Simoni quod sequatur versus Warrant' suos per auxilium Cur' Domini, prout sibi viderit expedire, &c. Postea ad diem illum ven' tam prædict' Matilda, Ricardus & Agn' quam prædict' Simon, Et iidem Matild' & alii petentes petunt quod procedat ad Assisam capiend' per defaultam præd' Simonis

Dunelm. Pater Odelivæ, avus Matildæ.

Simonis



Simonis ex quo quod nondum secutus fuit versus warrantos, &c. Et super hoc idem Simon' profert breve Domini Regis hic de mittendo recordum & processum Assise præd' eidem Domino Regi a die Sancti Michaelis in quindecim dies ubicunq; &c. quæ quidem recordum & processus, & etiam breve Domini Regis prædict' quod habuit record' consut' per prædict' Matild', Ricardum & Agnet' Domino Regi mittitur juxta tenorem brevis sui prædict'. Et idem dies præfixus est partibus coram eodem Domino Rege ubicunq; &c. Et prædict' Richardus & Agn' po: lo: suo prædict' Matild' in Placito prædict' &c. Ad quem diem coram ipso Domino Rege venerunt partes, & quia constat per recordum prædict' quod prædict' vocati ad Warran' sunt extrinseci, & quod vocati sunt ad Warran' per auxilium Curie Domini Regis qui est superior Dominus totius Regni, & qui omnibus & singulis de Regno suo justitiam facere tenetur, & maxime in defectu aliorum per quorum defectum idem Dominus Rex vocatur in auxilium; Præceptum est Vicecomi Northumb. quod summoneat prædict' Aymerum de Rocheford & Julianam uxorem ejus filiam & unam hered. Nicolai de Swineburn, Johan. Swayne & Aviciam uxorem ejus fil. & alteram hered. prædict'. Nicholai, & Tho. Fishburn fil. Christianæ coheredis prædictarum Julianæ & Aviciæ, quod sint coram Rege a die Sancti Hilarii in 15 dies ubicunq; &c. ad warran. &c. Idem dies datus est petentibus, & similiter prædict. Simoni tenen' per Warrant. in Banco, &c. Idem Simon. po: lo: suo Walt. de Middleton & Will. de Burgham loquela prædict'. &c. Et quia prædict. Episcopus non misit breve originale simul cum prædict. recordo, & necesse est prædict. breve hic mittat; Mandatum est prædicto Episcopo vel ejus locum tenenti, quod prædict. breve Domino Regi mittant, ita quod illud habeant ad præfatum Terminum, &c. Ad quem diem præd. Simon' tenens per warran' venit; & præd. Matild. de Swynburn, Richardus Bouche, & Agnes uxor ejus petentes non venerunt, nec, &c. Ideo prædict. Simon' inde sine die. Et prædict. Matilda, Ricardus & Agn. & plegii sui de prosequend. in misericordia, &c.

Nota.

Pasch. 46 E. 3.  
Coram Rege Rot.  
42.

In an Information against Thomas Bishop of Durham for a contempt in not certifying a Record, he pleads that he is Comes Palatinus & Dominus Regalis cujusdam terræ vocat' the Bishoprick of Durham, & habet omnia Jura Regalia quæ ad Comitem Palatinum & Dominum Regalem pertinent, per se, Justic' & ministros suos exercenda.

In this County Palatine there is a Court of Chancery which is a mixt Court both of Law and Equity, as the Chancery at Westminster; Herein it differeth from the rest, that if an erroneous judgment be given either in the Chancery upon a judgment there according to the Common Law, or before the Justices of the Bishop, a Writ of Error shall be brought before the Bishop himself, and if he give an erroneous judgment thereupon, a Writ of Error shall be sued returnable in the Kings Bench.

But now let us see what we find in our books concerning this County Palatine.

Mich. 14 E. 3. tit.  
Error 6.  
F. N. B. 21. g.  
8 El. Dier 250.

In a Forzemedon in Durham the tenant pleaded the warranty of the Ancestor of the Demandant, with assets in a forain County, whereupon the Court awarded that the tenant should go quit without day. And the Demandant upon this judgment sued a Writ of Error before the Bishop, and assigned for Error, that the Justices awarded that the tenant should go quit without day, where they ought to have continued the plea by adjournment until the Record had been removed. And for this error the Bishop reversed the judgment, and day given to the parties before his Justices where the plea was pleaded. At which



which day the tenant was essoined, and a day given over. At that day a Writ came to remove the Record in the common Bank, and a day given to the parties in the common Bank, and this proceeding of the Bishop was according to the usage there. And after by the advice of the whole Court a Venire fac' issued out of the common Bank to try the issue joyned at Durham.

If a man in the County Palatine of Durham vouch a forreiner to warranty, the demandant may counterplead that the vouchée hath assets within the County Palatine for the delay. 32 E.3. Vouch. 97. 14 H.6. fol. 3.

In a Writ of Trespas Des biens emportes deins un certēine ville, the defendant said, that the place where the plaintiff supposed the taking away, is within the franchise of the B. of Durham, where the Kings Writ runneth not, but is a franchise Royal, Judgment de brief. Whereunto the plaintiff said, that the defendant came in by distress, and so the Court seised of the plea. Finchden giving the rule of the Court said, the Court is not in this case seised of the plea, but that should be where consuance or franchise is challenged, which lieth not in this case, but the Bishop hath franchise Royal into which the Kings Writ runneth not, and therefore for not denying of the exception the Writ abated. Note the Town wherein the transitory trespass was alledged by the plaintiff was within the County Palatine. 13 E.3. Voucher 165. 45 E.3. 17. Vid. 19 E.3. trial 66. 19 E.3. jurisd. 29. 33 E.3. ib. 57. 45 E.3. Visne 50.

If the tenant vouch two, one within the County Palatine of Durham, and the other at the Common Law, summons shall be awarded to the Lord of the County Palatine, commanding him to summon the vouchée to be at a certain day before the Justices here to try the warranty: in this case if the tenant recover in value, the Justices shall write to the Lord of the County Palatine to render in value, quod fuit concessum. 19 H.6. 52.

See Dier 12 El. where he that hath jura regalia shall have forfeiture of High Treason, whereof Vide before in the Cap. of the County Palatine of Lanc.

\* If the one be vouched, and the tenant prayeth that he may be summoned in the County of York, and the County Palatine of Durham, the voucher shall stand, for if he be summoned in the County of York, it sufficeth.

¶ Dominus Rex habebit custodiam omnium terrarum eorum qui de ipso tenent in capite per servitium militare, de quibus ipsi tenentes fuer' seisciti in dominico suo ut de feodo die quo obierunt de quocunque tenuerunt per hujusmodi servitium, &c. exceptis feodis Episcopi Dunelm' inter Tine & Tese. Dier 12 El. 288. which was the case of James Pilkington Bishop of Durham. \* 13 H.4. Vouch. 39. 36 H.6. ib. 49. a Prærogativa reg. cap. 1.

1. This exception extendeth not to the body. 2. If the Bishop did after this Statute purchase any Seigniorie between Tine and Tese, it extendeth not to that. 3. That before this Statute, the King ought to have had the wardship of the lands, as appeareth in our books, contrary to Poles opinion in this case. 16 E.3. tit. Livery 29. Glanv. l. 7. c. 20. Brañ. l. 2. fol. 85. 9 H.3. prær. 25. 21 H.3. ib. 26. \* Prær. Regis c. 3.

\* The third Chap. of the said Statute of prærogativa Regis doth give the King primer seisin, &c. without any saving of the Bishop of Duresme.

Sir Tho. Gray Knight was seised in fee of the Mannor of Chillingham in the County of Northumberland holden of the Queen by Knights service in Capite, and of the Mannor of Rosse in the County Palatine of Durham holden of the Bishop of Durham by Knights service in Capite, and died seised of both, his son and heir of full age. And although on the behalf of the Bishop some presidents were shewed in like case, yet the two Chief Justices Popham and Anderson prima facie did hold, that the primer seisin of and for the Mannor of Rosse belonged to the King. Trin. 38 El. in Curia Wardorum.

The Town of Creke in the County of York holden of the Bishop of Durham, &c. shall be impleaded within the County Palatine of Durham, and in no other place: and so is the Mannor of Howden in the County of York. 22 E.4. jurisd. pl. 61.

The King shall have the temporalties of the Bishop of Durham, and for a Church that becometh void the King shall have a Quare Impedit. 5 R.2. trial. 94.

See the Statute of 5 El. c. 23. concerning the Writs of Significavit and Excom' capiendo. 5 El. cap. 23.

It was holden by all the Justices, that if a man be surety for another to keep the peace, and after he breaketh the peace, and the surety hath lands in the County 21 E.3. 49. 1 E.4. 10. Regist. 153. F.N.B. 132.



County Palatine of Durham, the King shall command the Bishop of Durham or his Chancellor to do execution. And so it is in the other Counties Palatines. In the same manner it is of a Statute Staple, &c. Recognizances, &c.

Vide 5 E.3. fol.58. 17 E.3. fol.56. Rot Parl. 7 E. 6. Rot. Pat. 7 E. 6. part. 8. 1 Mar. cap.3.

## C A P. XXXIX.

### *Of the Royal Franchise of Ely.*

33 H.8. cap.10.  
5 El. cap.23.

**I**n divers Statutes it is named the County Palatine of Ely. King H. 1. in the 10 year of his Reign, of the rich Monastery of Ely made a Cathedral Church, and of the Abby made a Bishoprick, and for his Diocess assigned unto him the County of Cambridge, which before was within the Diocess of Linc<sup>e</sup>: In recompence whereof Robert Bluet Bishop of Lincoln, then Chancellor of England had to him and his Successors thre Mannors, parcel of the possessions of the Abby, viz. Spaldwice, Bicklesworth, and Bugden. And for the Chapter of this new Bishop, he instituted that there should be a Prior and Covent. But in respect of the Revenues, for that their principal Mannors were granted away, the number of Monks being 70 were brought down to 40. And King H. 1. granted to this new Bishop and his Successors Jura Regalia within the Isle of Ely. But the said Prior and Covent were in the Reign of H. 8. suppressed, and in stead thereof a Dean and Prebendaries were raised to be the Chapter of the Bishop, and a Grammar School for a Master and 24 Scholars.

This Royal jurisdiction the Bishop hath by prescription grounded upon the said grant as well in Pleas of the Crown, as in Common Pleas before his Justices.

Trin. 3 E.1. Rot.  
62. Coram Rogero  
de Seryton & so-  
ciis suis Justicia-  
riis de Banc. Trin.  
16 E. 1. in Com-  
muni Banco Rot.  
89. Cant.

The liberty of the Bishop of Ely hath been anciently allowed by the Court of Common Pleas for lands in Wisbich, within the Isle whereof a Præcipe quod reddat was brought.

Again, Allocatur libertas Episcopo Eliensi pro terris infra Insulam de Ely prout alias, scilicet in rotulo Martini de Littlebury & sociis suis annis 55 & 56 H.3. Anno 14 Regis nunc coram Thoma de Wayland & sociis suis. Item Mich. 16 Regis nunc, Rot.27.

3 H.6. trial 2.

In trespass the Defendant pleaded an arbitrament made at A. in the Isle of Ely, and thereupon issue was joyned, the Plaintiff shewed that Ely is a Franchise Royal, and they of the Isle shall not be empanneled out, and prayed a Venire fac<sup>t</sup> to the Sheriff of Cambridge.

Lib. int. Rast. fol.

Issue being joyned and the Wilsne to come out of Ely, the Entry is, Super quo prædict<sup>us</sup> ( querens ) dicit quod E. prædict<sup>us</sup> est infra Insulam Eliens<sup>is</sup> quodque Episcopus Eliens<sup>is</sup> talem habet libertatem in Insula prædicta, quod nullus Justiciar<sup>um</sup> nec aliquis minister Domini Regis Insulam illam ingredi debet ad aliquod officium ibi exercend<sup>um</sup>, nec liberi tenentes nec residentes in eadem Insula illam ingredi debent ad aliquam Juratam extra Insulam illam faciend<sup>am</sup>, & petit breve Domini Regis de Venire fac<sup>t</sup> hic 12. de vicineto de Soham, quæ est propinquior Villa in prædict<sup>o</sup> Com<sup>itatu</sup> Cantabr<sup>ie</sup> extra Insulam prædict<sup>am</sup> adjacen<sup>tem</sup> prædict<sup>æ</sup> Villæ de Ely ad triandum exitum prædict<sup>æ</sup>. Et quia videtur Justiciariis hic quod petitio illa est rationi consonans, Ideo præcept<sup>um</sup> est Vic<sup>o</sup> Cant<sup>onie</sup> quod Venire fac<sup>t</sup> hic tali die 12. de vicineto illo, per quos, &c.

46 E. 38.

Sentence was given in the Ecclesiastical Court in Cambridge, and the Defendant was summoned at Hadington in the Isle and Franchise of Ely,

as he might be, for where the action is intire, and not severall, whereof part is within the Franchise and part without, the Franchise shall not be allowed. As if one take a man in a place at the Common Law, and carry him into a Franchise and there imprison him, this Court shall hold plea, quia magis dignum trahit ad se minus dignum. Et sic de similibus.

5 E.2. consens. 68  
21 E.4.35.

In an Action of Account against one as Wayliff of Lands in H. and A. and H. is within the Franchise of the Isle of Ely, and because the Plaintiff might have charged the Defendant as Bailiff of A. and it is no reason that by joining of them in one Writ to disherit the Bishop of his Franchise, the Writ abated.

24 E.3. consens  
74. 20 E. 3. ibid.  
85. 49 E.24.  
See 23 E.3.22.  
accord.

## CAP. XL.

### *Of the County Palatine of Pembroke.*

**T**his was an ancient County Palatine within Wales, and the Earl was Comes Palatinus, and had Jura Regalia; and all things belonging to a County Palatine, but the Jurisdiction hereof was taken away by the Statute of 27 H.8.cap.26. the County Palatine then being in the Kings hands.

And for further proof that it was a County Palatine, see the Charter of E.3. to Lawrence de Hastings in these words.

Rex omnibus ad quos, &c. Salutem. Sciatis quod circumspectionis & elegantie præfagium quod ex aptis consanguinei nostri charissimi Laurentii de Hastings juventutis auspiciis concepimus, merito nos inducunt, ut ipsum in his quæ honoris sui debitam conservationem respiciunt, promissis favoribus prosequamur. Cum itaque hæreditas bonæ memoriæ Audomari de Valentia Comitis Pembrochiæ ( ut dicitur ) jampridem sine hærede de corpore suo procreato decedentis ad sorores suas fuerit devoluta, iater ipsas & earum hæredes proportionabiliter dividenda : Quia constat nobis quod præfatus Laurentius qui dictus Audomar' in partem hæreditatis succedit est ex ipsius Audomari sorore seniori descendens, & sic peritorum assertione, quos super hoc consulimus, sibi debeat prærogativa nominis & honoris ; justum & debitum reputamus ut idem Laurentius ex seniori sorore causam habens, assumat & habeat nomen Comitis Pembrochiæ, quod dictus Audomarus habuit dum vivebat : quod quidem ( quantum in nobis est ) tibi confirmamus, ratificamus, & etiam approbamus ; Volentes, & concedentes ut dictus Laurentius prærogativam & honorem Comitis Palatini in terris quas tenet de hæreditate dicti Audomari, adeo pleno, & eodem modo habeat & teneat, sicut idem Audomarus illas habuit & tenuit tempore quo decessit. In cujus, &c. Teste Rege apud montem Martini die Octob. Anno regni 13.

Rot.Parliament,  
Hil.18 E.1.fo.6.  
Totus Com' Pem-  
broke fuit Com'  
Palatinus, & ha-  
buit Cancel. & Si-  
gillum, &c.  
27 H.8.cap.26.  
Carta Regis E.3.  
An.13. regni sui.  
13 Octob. Ro.Pat.  
13 E.3.m.12.

Note here that the  
eldest sister ought  
to have the honor,  
upon consultation  
with learned men:

Prærogativa &  
honor Comitis  
Palatini.  
Sicut Audomarus  
illas habuit.



## CAP. XLI.

*Of the Franchise of Hexam and Hexamshire.*

**T**his was sometime parcel of the possessions of the Archbishop of York, and claimed by him to be a County Palatine.

2 H. 5. cap. 5.

9 H. 5. cap. 7.

8 E. 4. cap. 2.

33 H. 8. cap. 10.

14 E. 1. cap. 13.

At the Parliament holden in 2 H. 5. it is resolved that Hexamshire was a Franchise where the Kings Writ went not.

And in the Statute of 33 H. 8. it is named a County Palatine.

But at the Parliament holden in Anno 14 Eliz. it was seriously examined, and in the end Four conclusions were enacted by Authority of Parliament. 1. That whiles it was in the hands of the Archbishop it was termed and named a County Palatine, where in right or proof there was none such. 2. That it is within, and parcel of the County of Northumberland. 3. That all Pleas of the Crown, and suits between party and party shall receive like trial, &c. as the rest of the Subjects of Northumberland ought to have. 4. That the Sheriff and other Officers of the County of Northumberland may execute his or their office, &c. within Hexam and Hexamshire. So as whatsoever it was before 14 Eliz. it is now no County Palatine, nor Franchise Royal.

## CAP. XLII.

*Of the Courts of the Cinque Ports.*

Domesday.

Chent.

Lib. Int. Rast. fo.

**A**t the first the privileged Ports were but thræ. For at the making of the book of Domesday, which was in the 14 year of the Conqueror, there are but thræ named in that book, viz. Dover, Sandwich, and Rumney, and that these thræ in the time of Edward the Confessor were exonerated of such charges and burthens, as others did bear; After two Ports were added to them by the Conqueror, viz. Hastings and Hithe.

Bract. li. 3. f. 118.

\* Memorandum

quod Pharanus de

Bolonia venit ad

Conquestum tem-

pore Willielmi Regis,

Basardi, & in illo Conquestu perquisivit

Wardam de Doveria in feodo, & habuit, & tenuit

roto tempore prædicti Regis Willielmi usque ad tempus Regis Henrici, avi Regis Henrici filii Regis Johannis, & dictus

Rex Hen. avus dedit dicto Pharano 60. libras terræ in eschambio pro Doveria, viz. Manerium de Wendovre pro

xl. libr. terræ, Kluksull pro x libr. terræ, & 7 hidas in Eton pro 10 li. terræ. In lib. de Abbathia Mill. fo. 114.

Bracton who wrote in the Reign of H. 3. nameth Hastings, Romuall, Heya, \* Dover and Sandwich to be the Five Ports. Of this number of Five were these Ports called the Cinque Ports, as it appeareth by a Writ which Bracton rehearseth in the same place, viz.

Rex Vic. Norff. & Suff. Salutem. Sciatis quod summoniri fecimus ad talem diem apud Shepwey omnia placita de Quinque Portubus sicut teneri debent, & solent coram Justiciariis apud Shepwey. Et ideo tibi præcipimus quod hoc sciri facias hominibus de Jernemewe, & ballivis de Donewiz, ita quod si aliquis conqueri voluerit de aliquo qui sit de libertate vel infra libertatem Quinque Portuum, tunc sit apud Shepwey coram præfatis Justiciariis nostris querelam suam propositurus, & justitiam inde recepturus. Teste, &c.

In Dorf. Cart.

Anno 1 Re. Jo.

parte 2. m. 12.

After two more, viz. Winchelsey and Rye were added: for I find a Record Anno 1 Regis Johannis, quod Winchelsey & Rye debent esse in auxilium Villæ de Hastings ad faciend' regis servitium 20 Navium, &c.

And these have the same Franchises and Liberties that the former had; and every one of these send two Burgeses by the name of Barons of the Cinque Ports



## Cap.42. *The Courts of the Cinque Ports.*

Ports to the Parliament, as by the Records of the return of them remaining in Chancery at every Parliament doth appear. And albeit two be added, yet they hold their former name of the Cinque Ports. These Ports or Havens do lye towards France, and therefore prudent antiquity provided, that they should be vigilantly and securely kept, for performance whereof these Ports have a special Governour or Keeper, called by his office Lord Warden or Keeper of the Cinque Ports, and is also Admiral, and hath the Jurisdiction of the Admiralty amongst them, and is exempt from the Admiralty of England. This Warden in former times was ever a man of great fidelity, wisdom, courage, and experience, for that he had the charge of the principal gates of the Realm. He is also Constable of the Castle of Dover, his Jurisdiction as Constable is limited by the Statute of Artic. super Cartas, Anno 28 E. 1. which you may read, and the Exposition thereof in the Second part of the Institutes.

50 E.3.5.

The Franchise of the Cinque Ports hath been time out of mind partly by ancient Parliaments, partly by ancient Charters, &c. and confirmed by express name by the Statute of Magna Carta ca. 9. and were made five by William the Conqueror.

Artic. super Cartas, cap.2. 2 part of the Institutes. 2 E.4.17. 17 E.4. 16,17. 36 H.6.34. Fortesc. Lib. Int. Raft.fo.

For the better understanding of our books; it is to be known that there is a great diversity between the principality of Wales, the Counties Palatines, &c. and the Cinque Ports. For Wales was originally no part of England, but County Palatines were parcel of the Realm of England, and divided in Jurisdiction, and the Cinque Ports are parcel of the County of Kent, and yet ubi breve domini regis non currit, but have not Jura regalia, and therefore regularly no Writ of Error did lie of a Judgment in Wales, otherwise it is in the Counties Palatines. A Judgment here of Lands in Wales, or in the County Palatine is void, but a Judgment given here of Lands in the Cinque Ports is good if the privilege be not pleaded, for they be part of the County, and the Franchise may be demanded in another action.

9 H.7.124  
36 H.6.33,34.

And it is to be observed that within the Cinque Ports there be divers Courts, one before the Constable of the Castle of Dover, (whereof somewhat hath been said before) there be other Courts within the Ports themselves, before the Bailiffs and the Jurators, and another which is called Curia Quinque Portuum apud Shepwey, whereof we shall speak hereafter.

If any of the Kings Courts do write to have a Record in the Cinque Ports, or for doing of any thing within the same, the Writ shall be directed Constabulario Castri de Dover, & Gardiano Quinque Portuum, for he is the immediate Officer to the Kings Courts for execution of the Kings Writs within the Cinque Ports. For example:

33 E.3. Jurisd. 60

If a man plead a Record within the Cinque Ports, and the other plead Nul tiel record, there shall go a Writ to the Constable of Dover to certify the Record, for the course is for the Kings Courts to write to the Constable, and he shall send to the Barons, that is to the Bailiff and Jurats, to certify him of the Record which is before them, and he shall certify the Kings Court, and so the Constable is the immediate Officer to the Kings Court.

30 H.6.6. & 7.

Note, though Hooks say that the Writs shall be directed to the Constable of Dover, yet the Writ is to be directed Constabulario Castri de Dover, & Gardiano Quinque Portuum.

Regist. fo. F.N.B. 80 b.240.a.

A man hath a Judgment in any of the Kings Courts, and the Defendant hath no Land or Goods but in the Cinque Ports, the Plaintiff shall have a Writ to the Constable of Dover to make execution. And so it is if a man will have surety of the peace against any person within the Cinque Ports, then he shall have a Writ out of the Chancery directed to the Constable of Dover, for the doing thereof.

Regist. fo. F.N.B.80.b.132. 21 E.3.49. See 1 E.4.10.

\*Et quia in quadā Carta domini regis nunc continetur, quod omnes querelæ versus ipsos Barones Quinque Portuum apud Shepwey terminari debent coram Custode Quinque Portuum, Præceptū est Stephano de Pencettē nunc Custodi, quod partibus prædictis coram eo certum diem assignet & fac' Justitiæ complementum.

Regist. 153. \* Rot. Parl. An. 13 E.1.fo.6. nu.115. Inter Abbatem de Feversham & Baron' de Port de Feversham.



a 30 H.6.6. & 7.  
Dier 23 El.376.  
Brook. Cinque  
Ports.25.  
Temps H.8. di-  
versity des Courts.  
b Hil. 18 E.1.f.6.  
Rot.Par. nu.115.  
Dorf. Claus. Anno  
30 E.1.m.13.

c *Curia Quinque  
Portuum de Shep-  
wey.* Nota, this for  
the stile of the  
Court.  
See Bra&.lib.3.  
Ubi supra.  
d 50 E.3.5.  
33 E.3.tit. jurisd.  
60.

1 E.3.fo.2.  
49 E.3.24.  
11 R.2. b're 636.  
45 E.3.8.  
33 H.6.4.  
8 H.3.7.  
\* 39 E.3.17.  
30 Ass. pa.1.  
8 E.3.27.  
e 49 E.3.24.

a If an erroneous judgment be given in the Cinque Ports before any of the Mayors or Jurats, it shall be redressed before the Constable of Dover at the Court at Shepwey, which Court was raised of ancient time by Letters Patents of E.1.

b The Court of the Cinque Ports holden at Shepwey adjudged the Abbot of Feversham (which Abby was within the Cinque Ports) for his offence to be imprisoned, for the which the Archbishop of Canterbury caused the Kings Ministers of Dover to be cited into the Ecclesiastical Court, &c. The Record saith, Quia secundum consuetudinem regni approbatam, & ratione juris regii, ministri regis pro aliquibus quæ fecerunt ratione officii sui, trahi non debeant. Rex prohibuit Archiepiscopo Cant' ne molestari faciat ministros suos Dovor, de eo quod Abbatem de Feversham pro delicto suo incarcerationem per considerationem c Curie Quinque Portuum de Shepwey, &c. The whole Record is worthy to be read over; this shall suffice for the end that I aim at.

Vide Fleta lib.2. cap.48. the Hustings apud Shepweye.

The Jurisdiction of the Cinque Ports is general, and extends as well to personal actions, as to actions real and mixt, or which touch the freehold, but so it is not in ancient demesne, for regularly that Jurisdiction extends not to personal actions.

If a Præcipe be brought of Land, part within the Cinque Ports, and part without, the whole Writ shall abate: & sic de similibus. \* And there is a diversity betwixen a Franchise to demand consanguinity, and a Franchise, ubi breve domini regis non currit: For in the first case the Tenant or Defendant shall not plead it, but the Lord of the Franchise must demand consanguinity, but in the other case, the Defendant may plead it to the Writ.

e The Mannor of P. within the Cinque Ports was holden of the King as of the honor of Egle, and escheated to the King for want of heir, the King granteth the Mannor of P. to another. And it is adjudged that the seisin of the King in this case doth not make it of another nature then it was afore; for the privilege runneth with the Land.

## C A P. XLIII.

*The Court of the Escheator, and of Commissioners for finding of Offices, &c.*

**T**HE gift of the Office of Escheator belongeth to the Office of the Lord Treasurer, who granteth the same by his Deed. He is to continue in his Office but one year or once in three years. 14 E. 2. c. 9. & H. 8. c. 8. & 2. c. 2.

For the derivation of his name, his antiquity, and some part of this office, see the first part of the Institutes, Sect. 4. where the ancient Authors and many Authorities be quoted: He ought to be seised of 40 Marks land, except Escheators in Cities and Counties Palatine.

All Writs Original of Diem clausit extremum, Mandamus, Devenerunt, Melius inquirend', Quæ plura, &c. are directed to him to find an Office for the King after the death of his Tenant, which held by Knights Service in Capite, or otherwise by Knights Service.

This Officer in case of Escheats for Treason, Felony, or in case of Wardship, or Primer seisin, may find an Office virtute Officii. But in case of Wardship, or Primer seisin, if he find an Office virtute Officii, if the Land, &c. be of the yearly value of 5 l. (or above) he shall lose every time he shall sit 5 pounds. 3 H. 8. cap. 2.

Offices found before him virtute Officii, he may return either into the Court of Chancery, or into the Exchequer, saving at this day for Wardships, or Primer seisin, which he must return into the Chancery: for by the Statute of 32 H. 8. Cap. 46. the Court of Exchequer is barred to deal with the same. And Offices found before him virtute Brevis, are to be returned by him into the Chancery. Lib. 1. fol. 42. b. Alton woods. 4 E. 4. 24. Stanf. prer. 7 c. b.

If he sit by force of a Writ, he ought to take the Inquest within a moneth next after the delivery of the Writ, and he ought to return the same within a moneth after he taketh it, either by Writ, or virtute Officii. 3 H. 8. c. 2. 8 H. 6. 16. 18 H. 6. 7.

Sæ Capit' Eschaetrix, whereof the Escheator may inquire: and the Statute De Eschaetoribus, Anno 29 E. 1. Vide Dier. 248. 249. a He is accountable pro catallis felonum, fugitivorum, & hujusmodi. b All Offices found before him, or Commissioners ought to be found by the oaths of twelve men, every Juror to have Lands, &c. to the yearly value of 40 s. in the same County, c and indented, and one part by them sealed, and by him the other part, which is to remain with the Foreman of the Jury, and to be taken in good Towns, and open places. For secret Offices are abhorred in Law, full of vexation and charge, and never have good success, Mag. Cart. 1. part. fol. 160. 161. a Keywl. 6 H. 8. 1. 3. b 1 H. 8. cap. 8. 3 H. 8. cap. 2. c 34 E. 3. cap. 13. 36 E. 3. cap. 13. otherwise void.

Neither he nor the Commissioners can take any Enquest of inquiry of any other persons, but such as be impanelled and returned by the Sheriff. 8 H. 6. cap. 16. 18 H. 6. cap. 7.

If he or the Commissioners shall deny any person to give evidence openly in his presence to such Enquests as shall be taken before him for the finding of an Office, he shall forfeit 40 l. If he, or the Commissioners, or any of them shall refuse to take a verdict of the Enquest offering to present the same, he shall lose 100 l. to the party grieved. 1 H. 8. cap. 8. 3 H. 8. cap. 2.

An Office found before Commissioners is as forcible in Law, as if it had been found before the Escheator. 24 E. 3. 55.

The Escheator ought to take no fee by the Statute of W. 1. but of the King only, but if he find an Office by force of any Writ, and according to the same for the King, he shall have a fee of 40 s. by the Statute of 23 H. 6. but if it be found See the 2. part of the Institutes, W. 2 c. 26. 23 H. 6. c. 17. 1 H. 3. c. 8.



found before him by Writ, or ex Officio, that the Lands are holden of a Subject, or if he find an Office for the King virtute Officii, there is no fee due to him. But the Commissioners ought to take no fee at all, though an Office be found for the King, because they are not within the Statute.

*a* 33 H.8. cap. 22.

*b* 32 H.8. cap. 46.

*c* 5 E. c. 9. 12 E. 4.

c. 9. F.N.B. 100c.

9 H.6. fol. 60.

*d* 5 E. 3. c. 4.

Register 177.

*e* 21 E. 4. 23. F.N.

B. 100. c. 1 H.8.

ca 8. 3 H.8. cap. 2.

9 H.6. fol. 60.

*f* Regist. fol. 301. b.

*g* 10 H.7. 7. b.

*a* The Escheator finding an Office for the King by force of any Writ, not exceeding the value of 5 l. shall not take above 15 s. and the Commissioners can take nothing: *b* but the Master of the Wards may allow Commissioners Counsellors, and Feodaries their Costs. *c* The Escheator may make Deputies, but such able men, for whom he will answer, and that have sufficient Lands in, the same County, &c. and the Escheator shall certify the name or names of his Deputy or Deputies, under his Letters Patents into the Exchequer within twenty days after deputation made. And no Deputy shall take upon him to occupy that Office, except the Escheator hath Lands to the value of 20 l. *d* And if any Sub-escheator be made, not having sufficient, he may be removed by the Kings Writ directed to the Escheator De Subeschaetore amovendo.

*e* If the Escheator, Sub-escheator, or Commissioner, return a false Office, an Action upon the Case doth lye against them by the party grieved, although they be Offices of Record, besides the penalty of 100 l. by the Statutes of 1 H.8. and 3 H.8. *f* The oath of the Escheator expressing his duty, appeareth in the Register, fol. 301. b.

*g* If I be possessed of the goods of a man outlawed in trespass, and I deliver them to the Escheator, I am discharged, quod Brian affirmavit: for he said that the Escheator is the Kings Minister, and chargeable for the goods.

## C A P. XLIV.

*Courts in the Universities of Cambridge and Oxford.*

**I**T is true that each of these Universities hath divers Courts, Jurisdictions, and Powers, by the Charters of the Kings of this Realm, divers of which were not grantable by Charter, but by authority of Parliament, which being espied, Queen Elizabeth, (who could (we speak it of knowledge) not only speak the Language of French, Italian, and Spanish, but was learned in the Latine and Greek learned tongues, and excelled all others of her Sex in knowledge both Divine and Humane,) for the great love and favour that her Majesty bare to her Highness Universities, and for the great zeal and care that the Lords and Commons in Parliament had for the maintenance of good and godly literature, and the vertuous education of youth within either of the said Universities; and to the intent that the ancient Priviledges, Liberties and Franchises of either of the said Universities, granted, ratified and confirmed by the Queens Highness, and her most noble Progenitors, might be had in great estimation, and be of greater force and strength, for the better increase of learning, and the further suppressing of vice: It was enacted by Authority of Parliament holden in the 13 year of her most prosperous Reign: 1. That each of the Universities should be incorporated by a certain name (albeit they were ancient Corporations before,) 2. That all Letters Patents of the Queens Highness, or by any of her progenitors or predecessors, made to either of the said incorporated bodies severally, or to any of their predecessors of either of the said Universities, by whatsoever name or names, the Chancellor, Masters and Scholars, of either of the said Universities, in any of the said Letters Patents had been named, should be good and effectual, and available in Law, to all intents, constructions and purposes, &c. as amply, fully, and largely, \* as if the said Letters Patents were recited verbatim in that Act of Parliament, any thing to the contrary notwithstanding. 3. That the Chancellor, Masters and Scholars of either of the said Universities, and their successors for ever, should severally have, hold, possess, and enjoy, and use to them and their successors for ever, all manner of Mannors, &c. and Hereditaments, and all manner of Liberties, Franchises, Immunities, Quitances, and Priviledges, view of Frankpledge, Law days, and other things whatsoever they be, which either of the said incorporated Bodies had held, occupied or enjoyed, or of right ought to have had, used, occupied and enjoyed, according to the true intent and meaning of the said Letters Patents whatsoever, any Statute, Law, Usage, Custom, or other thing or things, made or done to the contrary notwithstanding. 4. That all Letters Patents of the Queens Highness, or any of her progenitors or predecessors, and all manner of Liberties, Franchises, Immunities, Quitances, and Priviledges, Leets, Law days, \* and all other things whatsoever therein expressed, given or granted to either of the said Universities, by what name so ever, be and by vertue of this Act should be established and confirmed, any Statute, Law, Usage, Custom, Construction, or other thing to the contrary notwithstanding.

By this blessed Act of Parliament, all the Courts, Franchises, Liberties, Priviledges, Immunities, &c. mentioned in any Letters Patents, &c. to either of the said Universities (which were too long here to be recited)\* that they might prosper in their study with quietness, are established, made good and effectual in Law, against any Quo warranto, Scire facias, or other suits, or any quarrel, concealment or other opposition whatsoever. See the Letters Patents of King H. 8. bearing date primo Aprilis Anno 41 of his Reign, made to the University,

Liberal Arts and Sciences are *Lumina Reipublice.*

\* Note these general brief and effectual words.

\* Nota hoc.

Note these general binding and effectual words.  
*Actus benedictus.*

\* Haud facile emergunt quorum virtutibus obstat Res vexata domi.

of



of Oxford; and other Letters Patents bearing date 26 Aprilis, Anno 3 Regine Eliz. made to the University of Cambridge, both which are by expresse name established and confirmed by the said Act of 13 Eliz. In which Act there is a Saving to all, other then to the Queens Majesty, her heirs and successors. Et sic omnia in tuto.

Touching the Jurisdiction and Consensus of divers things belonging to the University of Cambridge, see the Parliament Roll of 5 R.2. n.45, &c. till n.66.

Nota (*proh dolor*)  
the ancient Char-  
ters, Records, &c.  
of the University  
of Cambridge  
burnt by Rebels.

The Mayor, Bailiffs, and Comminalty of Cambridge were accused, for that they in the late tumults and uprores confedered with divers other misdoers, brake up the Treasury of the University of Cambridge, and thereout took, and burned sundry the Charters, &c. of the said University, and also compelled the Chancellor and Scholars of the said University, under their Common Seals to release to the said Mayor and Burgeses, all manner of Liberties, and also all Actions real and personal, and further to be bound to them in great sums of money: whereupon it was agreed in form following: That one Writ should be directed to the Mayor, Bailiffs, and Comminalty of Cambridge, that then were to appear in the Parliament, and to answer (the form thereof doth there appear.) And that another Writ in form aforesaid should be directed to the Mayor and Bailiffs that were at the time of the offence, (the form wherof doth there appear also.) The Mayor and Bailiffs that then were appeared in proper person, and pleaded not guilty, ne witting thereto; the Comminalty by their Attorneys appeared at the day. The Mayor and Bailiffs, that before were at the time of the offence, appeared also in proper person, & the said Mayor answered, That he was not privy to any such act, but only by compulsion of others, if any thing were therein done; the which the Kings learned Counsel then did disprove, as by the Record appeareth. The Burgeses of Cambridge delivered into the Parliament the said two Writs sealed by the Chancellor and Scholars, the one Writ contained a release of all Liberties and Priviledges, with a bond of 3000 l. to release all suits against the said Burgeses. The other was a Release of all Actions real and personal, as there doth appear. Upon the reading of which two Writs, they both were commanded to be cancelled for the causes aforesaid. After this the Chancellor and Scholars aforesaid by way of petition, and in form of sundry Articles exhibited, shewed the beginning and whole discourse of the said Mayor and Bailiffs effectually and largely. Upon reading of which bill, it was demanded of the said Burgeses what they could say, wherefore their liberties late by the King confirmed should not be seized into the Kings hands as forfeited.

They require 3 things, viz. 1. A copy of the bill. 2. Counsel. And 3. Respight to answer. To the copy of the bill was answered, that sithence they heard the same, it should suffice, for by Law they ought to have no copy. To Counsel, it was said, that wherein Counsel was to be had, they should have, wherefore they then were appointed to answer to no crime or offence, but only touching their liberties. After many dilatory shifts and subterfuges, the said Burgeses touching their liberties only, having no colour of defence, submitted themselves to the Kings mercy and grace, saving their answers to all other matters. The King thereupon by common consent of the Parliament, and by Authority of the same, seized the same liberties into his hands as forfeited. And after the King granted to the Chancellor and Scholars aforesaid, within the said Town of Cambr. and \*Suburbs of the same, the Assise, consuance, & correction of Bread, Ale, Weights, Measures, Regrators, and Forcellers, with the fines, and amerciaments of the same, yielding therefore yearly at the Exchequer 10 l. And certain liberties the King after granted to the said Mayor and Bailiffs, and increased their former fee farm.

This University of Cambridge hath power to print within the same omnes & omnimodos libros, which the University of Oxford hath not. See a notable record in Parliament, 13 H.4. concerning the University of Oxford, by the which it was decreed and adjudged by Authority of Parliament, that the Popes Bull should not impeach, or alter the right and custom of any thing concerning that University, and therefore was disallowed, too long to be here inserted.

Nota, by Act of  
Parliament.  
Vid. Rot. Parl.  
8 R.2. nu. 11.  
Nota, Suburbs  
proveth a City.  
Nota, the priority  
of the grant to  
the University.

Rot. Par. 13 H.4.  
nu. 15, 16, 17.



## CAP. XLV.

*The Court of the Stanneries in Cornwall  
and Devon.*

**T**he stile of the Court of Stannery is, and always hath been, Magna Curia Domini Regis Ducatus sui Cornubiæ apud Crokerenton in Com̃ Devon coram A.B. Custode Stannariæ dicti Domini Regis in dicto Com̃ Devon.

¶ *The stile of the Court.*

The Officers of this Court be the Steward, Under-warden, &c.

It is called Stannaria à Stanno, because the Lord Warden hath Jurisdiction of all the Tynne in Cornwall and Devon. Tynne is a Saxon word, and derived à tinnity, and the Tynners are called Stannatores.

¶ *The Officers.*

The Jurisdiction of this Court is guided by special Laws, by Customs, and by prescription time out of mind, which so far as we find it to be allowed by the resolution of the Judges, or by Act of Parliament, we will recite.

¶ *The Jurisdiction.*  
See the first part of the Institutes, Sect.

In Cancellaria apud Westm̃ coram Nicho. Bacon milite Custod̃ Magni Sigilli Angliæ pro Stannatoribus, die Veneris, viz. 14 die Novembris Anno regni Elizabethæ Reginae Quarto. Inter Martinum Trewynarde Quer̃ in Cur̃ Stannar com. Cornub', & Johannem Killegrew & Georgium Trewynard Defend.

Where the 14 day of October last past, the matter in question touching the allowing or disallowing of Writs of Error, as well between the parties aforesaid, as also for and concerning all other Writs of Error touching all causes determinable in the Stannery Court in Cornwall, was by the order of the Lord Keeper of the Great Seal of England committed to the hearing and examination of Sir William Cordel Knight Master of the Rolls, and Sir James Dier Knight Chief Justice of the Common Pleas, and Justice Weston; to the intent upon the due consideration of the cause they should make report unto the said Lord Keeper of their opinions and proceedings therein, as in their judgments should seem most agreeable to Justice and Equity: who having accordingly travelled diligently for the understanding of the truth of the premises, upon the deliberate hearing and examining of the cause in the presence of the Council learned of both sides, and upon the perusing and consideration of the ancient prescriptions, Customs, Liberties and Charters exhibited by the said parties concerning the premises, have this day made their report unto the said Lord Keeper as followeth, That is to say: That for as much as the said Plaintiff could not, nor did not shew forth any Record or President, whereby any judgments or executions heretofore passed in any of the said Stannery Courts have been reversed by Writ of Error in any of the Queens Majesties Courts of her Bench or Common Pleas: And for that it appeareth unto them that divers and sundry inconveniences were likely to ensue by allowing of such Writs of Error, and upon other causes and considerations them especially moving: They in their opinions think it not meet nor convenient that any Writs of Error shoul pass or be suffered in such case to reverse any of the said Judgments or Executions. Upon which report made, It is this day ordered by the said Lord Keeper of the Great Seal, that the Order heretofore taken the 15 of June last past made against the Lord Warden of the Stanneries aforesaid, his Officers and others mentioned in the same, concerning the not allowing, or not executing of any Writ of Error: and all and singular the contempts contained in the same Order supposed

Mich. 4 Eliz. in Cancellar.  
Trewynards case.

No Writ of Error lyeth upon any judgment in the Stannery Courts. Vide Simile Dier 23 Eliz. fo. 176. But judgments shall be reversed by Appeal as in the next page appeareth.



by them to be committed, concerning the not allowing or not executing of any Writ or Writs of Error as is aforesaid, shall be clearly frustrated and void, and they and every of them clearly released and discharged, any thing in the same Order to the contrary notwithstanding. And that the said Defendants and every of them shall be at their liberty to take their advantage against the said Plaintiff for their executions had or to be had in any of the said Stannery Courts according to the custom of the same Courts without let or impeachment of any Writ or Writs of Error or of false judgment sued or to be sued in any of the said Courts of the Kings Bench or Common Pleas. And that from henceforth no Writ or Writs of Error, or false judgment be hereafter sued in any of the said Courts of the Kings Bench or Common Pleas to reverse any judgment or judgments in any of the said Courts of Stanneries heretofore given, or hereafter to be given, until upon further consideration of the ancient grants and liberties of the said Courts of Stanneries, or upon some other sufficient cause or matter, it shall be otherwise ordered and determined by this Court of the Chancery.

Mich. 7 Eliz. Regina in Camera Stellata, 29 Nov.

In Camera Stellata apud Westm coram Concilio ibidem die Mercurii, viz. 29 die Novemb. Anno regni Dñæ Eliz. Dei gratia Regina, Angliæ, Franciæ, & Hiberniæ, fidei defensor, &c. Septimo 1564.

Where a matter in variance hath been heretofore moved, and depending in this honourable Court, between Martin Trewynard Plaintiff, and John Raskarrock, William Gilbert, John Killegrew the younger, James Drewe, and other Defendants by two several Bills exhibited into this Court, whereof the last Bill containeth no other matters of effect being not mentioned in the first Bill, other then the taking of certain cattel of the said complainant and others. And where also it appeareth this present day, that the taking of the said cattel was by certain of the said Defendants lawfully authorised for that purpose by the Steward of the Stannery Court of Penwith, and carried into the County of Cornwall for an execution upon a condemnation by judgment had in the said Court against the said Plaintiff. Touching which condemnation the said complainant hath complained as well in the Court of Chancery by Bill, and in the Kings Bench by Writ of Error, as also in this Court, as appeareth in the first of the said two Bills here depending, meaning by some of these ways to call in question the validity of the said judgment, and was out of the said several Courts by or der discharged and dismissed, referring the proceeding upon the said judgment to the order of the said Stannery Court, according to divers Ordinances by divers ancient Charters, Customs, and Liberties belonging to the Stannery ratified by Act of Parliament. And where it doth also appear that the taking of the said Cattel, whereupon the said last Bill in this Court is exhibited was only for the execution of the said recovery. And where also it doth further appear, that by the Laws and Ordinances of the said Stannery (if any such cause of complaint be ministred) the same is to be redressed by appellation in several degrees, viz. first to the Steward of the Stannery Court where the matter lyeth, then to the Underwarden of the Stanneries, and from him to the Lord Warden of the same Stanneries: and for default of Justice at his hands, to the Princes Privy Council, and not examinable either here in this Court or in any other Court. It is therefore this present day ordered, that the said several Bills of complaints, and the said Defendants named in the same, with all the causes therein mentioned, be forthwith dismissed out of this Court to be determined according to the said Laws and Ordinances in the said Stannery, and not elsewhere.

Erroneous judgments in the Stannery are to be reversed by appellation, and to whom this appellation shall be made.



The resolution of all the Judges ( by force of his Majesties Letters) concerning the Stanneries in *Devonshire* and *Cornwall* upon the hearing of the Council learned of both parties at several days, and what could be alledged and showed on either party, and upon view and hearing of the former proceedings in the Courts of the Stanneries both before and since a certain Act of Parliament made concerning the Stanneries in \* 50 E.3.

Term. Mich.  
4 Jac. Regis.

\* See this Act of  
Parliament here-  
after in this Chapl

First, we are of opinion, that as well *Flowers* as all other labourers and workers (without fraud or covin) in or about the Stanneries in *Cornwall* and *Devon*, are to have the privilege of the Stanneries during the time that they do work there.

Secondly, that all matters and things concerning the Stanneries, or depending upon the same, are to be heard and determined in those Courts according to the custom of the same time out of mind of man used.

Thirdly, that all transitory actions between *Tynner* and *Tynker*, or *Woker* and *Woker* (though the cause be Collateral, and not pertaining to the Stannery) may be heard and determined within the Courts of the Stanneries according to the custom of the said Courts, albeit the cause of Action did rise in any place out of the Stanneries, if the Defendant be found within the Stannery: or may be sued at the Common Law at the election of the Plaintiff. But if the one party only be a *Tynner* or *Woker*, and the cause of Action being transitory and collateral to the Stannery do rise out of the said Stanneries, then the Defendant may by the custom and usage of those Courts plead to the jurisdiction of the Court, that the cause of action did rise out of the Stanneries, and the jurisdiction of those Courts, which by the custom of the Court he ought to plead in proper person upon oath. And if such plea to the jurisdiction be not allowed, then a Prohibition in that case is to be granted. And if in that case the Defendant do come to plead to the jurisdiction of the Court upon his oath, he ought not to be arrested *eundo*, *redeundo*, *vel morando*, at the suit of any subject in any Corporation, or other place where the said Courts of the Stannery shall be then holden.

Fourthly, if the Defendant may plead to the jurisdiction of the Court in the case before mentioned, and will not, but plead and admit the jurisdiction of the Court and judgment is given, and the body of the Defendant taken in execution, the party cannot by Law have any action of false imprisonment, but the execution is good by the custom of that Court. But if in that case it doth appear by the Plaintiffs own shewing, that the contract or cause of action was made or did rise out of the Stanneries, and the jurisdiction of those Courts, or if it appear by the condition of the bond whereupon the action is grounded, that the condition was to be performed in any place out of the jurisdiction of those Courts, then all the proceedings in such cases upon such matter apparent, are *coram non Judice*.

Fifthly, we are of opinion, that no man ought to demur in that Court for want of form, but only for substance of matter. As if an Action be brought there for words which will bear no action, or an action of debt upon a contract against Executors or Administrators, or such like; In such cases a demurrer may be upon the matter. And that the proceedings there must be according to the custom of those Courts used time out of mind of man: for that no Writ of Error doth lye upon any judgment given there, but the remedy given to the party grieved is by appeal, as hath been time out of mind of man accustomed.

Sixthly, that the Courts of the Stannery have not any jurisdiction for any cause of action that is local, rising out of the Stanneries.

Seventhly, that the privilege of the workers in the Stanneries do not extend to any cause of action that is local rising out of the Stanneries (for matters of life, member, and plea of Land are by express words excepted in their Charters) and no man can be exempt from Justice.

Vide lib. Intr. Coke fo.467. tit. Prohibition, & fo.23.293.b. in Error. Vide Fleta lib.6. cap.7. § *Scrivita vero*.



Such Charters, Records, and Acts of Parliament as we have observed concerning the Stannery, we will according as we have done throughout this Treatise recite in serie temporis.

In Registro Episcopi Exon.

\* This was Simon de Apulia, first Dean of York, & consecrate Bishop. 8 Johan. 10 E. 2. Inquis. 2. nu. 29.

Rot. Pat. 1 H. 3. m. 4.

\* She was the daughter of Aymer Earl of Angouleme.

a Rot. fin. 4 H. 3.

b Rot. Pat. 10 H. 3. m. 9.

c Rot. Pat. 33 E. 1. The liberties and privileges of the Tanners.

d Pl. Com. 327, 328 35 E. 1. in the Treasury.

f Rot. Pat. 4 E. 2.

g 12 E. 3. part 1. nu. 17.

Rot. Pat. 21 E. 3. Vide Rot. Pat.

26 Apr. Anno

7 E. 6. Gilbert Brockhouse.

h Rot. Pat. 50 E. 3. holden the Monday after the Feast of S. Gregory

Johannes Dei gratia Rex Angliæ, &c. Sciatis quod intuitu Dei, & pro salute animæ nostræ dedimus & concessimus, ac præsentī carta nostra confirmavimus Deo, & Ecclesiæ beati Petri Exon, & venerabili patri \* Simoni Exon Episcopo & successoribus suis Exon. Episcopis Decimam de antiqua firma Stanni in Com̃ Devon' & Cornub. Habendum sibi & successoribus suis cum omnibus libertatibus & liberis consuetudinibus ad eam pertinentibus per manus illius vel illorum qui Stannariam habuerint in custodia, &c.

Rex Roberto de Courtney Salutem. Mandamus vobis quod sine dilatione & difficultate aliqua habere faciatis \* Isabellæ Reginae matri nostræ Stannariam Com̃ Devon cum Cuneo & omnibus pertinent. Teste Com̃ Marechallo, &c.

a Rex concessit Johanni filio Rici Stannariam in Cornubia, reddendo mille marcas. Simile Anno 5 H. 3. Rot. finium.

b Rex &c. Sciatis quod commisimus Ricō dilecto fratri nostro Stannariam nostram Cornubiæ cum omnibus pertinent, &c.

c There be two several Charters of liberties and privileges both bearing date 10 Aprilis Anno 33 E. 1. the one made ad emendationem Stannariarum nostrarum in Com̃ Devon, and the other ad emendationem Stannariarum nostrarum in Com̃ Cornubiæ, d which you may read at large in Pl. Com. e These Charters were allowed in Anno 35 E. 1.

f The Charter of 33 E. 1. was confirmed to the Tynners of Devon, de verbo in verbum, and the like in 1 E. 3. and 17 E. 3.

g Vide Rot. Almania, Anno 12 E. 3. part. 1. nu. 17. An Ordinance of the King by advice of his council concerning Tynne.

A Lease made to Tideman de Linberghe de Cunagio Stannariæ & de emptione totius Stanni in Com̃ Devon & Cornub. pro fine mille marcarum & 3500. marcarum redditus. These were things done de facto, but let us turn our selves to that, which hath the force of a Law, viz. h An excellent declaration, limitation and Exposition of the said Charters of 33 E. 1. that was made in the Parliament holden in An. 50 E. 3. by authority of the same, but never printed, (which we have set down in hæc verba, to the end that no syllable of the same should be omitted) it is enacted as followeth.

*A tres excellent & tres redout Seign' le Roy, supplie sa poure Commune del County de Devonshire que luy pleasse per l'avys des Prelats, Countees, Barons, & autres sages in cest present Parliament ordeiner remedie de ceo que les Esteynors, & les Ministres del Esteynery del dit County ont long temps a la dit Commune sibien as seigneurs come as autres fait, & font de jour in autre diverses extortions, oppressions & grievances per colour de les Franchises a eux grantes per les Chartres nostre seigneur le Roy, & de ses progenitors encontre la ley & le purport des ditz Chartres, & per leur malveis interpretation dicelles: & que les ditz Chartres & les Franchises comprises en ycelles puissent leuz & declarez d'article en article si que la Commune du dit County puissent estre apris droiturement d'ycelles, & que cest declaration soit mys en record. Et si nul article y soit en les ditz Chartres que touche customes ou usages, que plese a nostre dit seigneur le Roy d'ordeiner & mander en brief temps suffisants Justices seigniors & autres apris de la ley a celles parties denquiere des dites customes & usages, & quils eyent poyur de oyer & terminer tous les conspiracies, confederations, alliances, champerties, extortions, oppressions, grievances, fauxines & maintenances qu'eux les ditz Esteynors & leur Ministres ont fait a la dite Commune, ou a nul de eux qui plendre se vorra, & ce auxi bien al suit le Roy, come de la party entendants que le Roy nostre seignior*



*nior ent gaignera molt, & d'autre parte se remede ne lour y soit ore fait ilz  
ferront en brieve temps pur la greinder party disberites & destruitz a toutz  
jours, que Dieu ne voilla. Le tenour d' ascuns des articles de les dites Char-  
tres que lour besoignent de declaration sensuent cy apres premerement,  
Cestascavoir.*

Sciatis nos ad emendationem Stannarū nostrī in Com' Devon' ad tran-  
quillitatem & utilitatem Stannatorum nostrorum prædictorum earun-  
dem concessisse pro nobis & hæredibus nostris, quod omnes Stannato-  
res præd. operantes in Stannariis illis quæ sunt dominica nostra, dum  
operantur in eisdem Stannariis liberi sint & quieti de Placitis Natio-  
rum, & de omnibus Placitis & querelis Curiam nostram & hæredum  
nostrorum qualitercunque tangentibus, Ita quod non respondeant co-  
ram aliquibus Justiciariis vel Ministris nostris seu hæredum nostrorum  
de aliquo Placito seu querela infra prædict' Stannarias emergentibus,  
nisi coram Custode nostro Stannariarum nostrarum prædictarum qui  
pro tempore fuerit, (exceptis placitis terræ, vitæ, & membrorum) nec  
non recedant ab operationibus suis per summonitionem alicujus mini-  
strorum nostrorum seu hæredum nostrorum, nisi per summonitionem  
dicti custodis nostri. Et quod quieti sint de omnibus tallagiis, theolo-  
niis, stallagiis, auxiliis & aliis customis quibuscunque in Villis, Portu-  
bus, Feriis & Mercatis infra Com' prædictum de bonis suis propriis, &c.

*Sur quoy plese declarer si autres persones que les Estainors overants in les  
Estayneriis averont & emoyeront la Franchise grante per la dite Chartre  
du Roy desicome la dite Chartre voet, quod omnes Stannatores prædicti  
operantes in Stannariis illis sint liberi, &c. Et autres persones que les  
overours, cestascavoir leurs maistres que les lovent & loure servants & au-  
tres claymont mesme la Franchise. Et auxint plese declarer si les ditz ove-  
rors y averont les Franchises en autre temps que quant ilz averont in mes-  
me l' Esteynery, desicome la Chartre voet dum operantur in eisdem Stan-  
nariis liberi sint, &c.*

*Endroit de les dits paroles.* Operantes in Stannariis illis, & dum ope-  
rantur in eisdem Stannariis, soient clerement entendus, de operariis labo-  
rantibus duntaxat in Stannariis illis sine fraude & dolo, & non de aliis,  
nec alibi laborantibus.

*Item soit declare si mesmes les overours averont mesme les Franchises  
tant come ils averont aillors que in les desmesnes que feurent au Roy laiell  
nostre Seignior le Roy que ore est. La quel Roy Ayell lour grantast la dite  
Chartre au temps del dit grant des Franchises desicome la Chartre voet,  
quod omnes Stannatores prædicti operantes in Stannariis illis quæ sunt  
dominica nostra, dum operantur eisdem Stannariis sint liberi, &c. Et  
ilz claymont d' avoir sount soit il einfi quils overont aillours qu' en les dites  
desmesnes le Roy layel.*

*Endroit de cest article pur ce que il y a une autre article en mesme le  
Chartre, que lour donne conge & licence de fover, In terris, moris, & va-  
stis ipsius Domini Regis & aliorum quorumcumque in Com' prædicto,  
& aquas, & cursus aquarum ad operationes Stannariarum prædictarum  
divertere ubi & quotiens opus fuerit, & emere buscum ad functuram  
Stanni, sicut antiquitus fieri consuevit, sine impedimento Domini Re-  
gis, hæredum suorum, Episcoporum, Abbatum, Comitum, Baronum,  
feu*



feu aliorum quorumcunque, &c. Il semble un besoignable chose en ce case que lour custumes & usages soient diligemment enquiz, & que le Gardein de Lesteynerie soit charge que il ne soeffre nul overour del dit Esteynerie fover en prees, ne autry boys, neve abate autry boys ou autry meafons, ne bestover eane ou cours de eane per malice. Et si per case le dit gardein se y vorra excuser que les dits Esteynors ny voillent obeire a ses maundements, ne cesser lour malice pur luy que tant tost il se face monstrier al grand conseil le Roy, & due & hastive remedy ent serra ordeignes.

Item soit declares in special comen les Justices que ore serront assignes d'aller celles Marches pur ent faire la dite enquerre prendont lissne du pais si ascun y chiete entre parties, & coment ceste article precedont touchant les custumes & usages estoit uses devant la fesaunce de la dit Chartre l'aiel, & per queux gents tielle issue serra tries, cestascavoir le quel per foreins seulement, ou per Estaynors seulement, ou per ambideux, &c.

Endroit de cest article, en soit la vus pris du grant conseil & y soient les records en Eyre si nulles y soient, & autres evidences & remembrances deins le treasury le Roy & aillours, & auxint les remembrances des seigniors queux y ont estre pur le temps serches & duement examinees, & auxint soient les liures & evidences quelles les dits Estaynors ent ont envers eux venues & regarades, issint que le y purra le mieltz venir al droit verity.

Item soit declare si le Gardein del Estaynery puisse tenir plee entre Esteynor & forein de querele sourdant aillours que in les lieux ou ilz sont overants desicome la Chartre voet, quod custos noster prædictus vel ejus locum tenens teneat omnia placita inter Stannatores prædictos emergent & etiam inter ipsos & alios forinsecos de omnibus transgressionibus, querelis & contractibus factis in locis in quibus operantur infra Stannarias prædictas similiter emergent, &c. Quar' il tient plee de tiens quereles sourdants chascune parte deins la dit counte.

Endroit de cest article. Se ont extende la jurisdiction clerement selon les paroles del dit Chartre, cestassavoir, In locis ubi iidem operarii operantur, & nemi aillours, ne en autre manner.

Item plese declares de ceo que la dite Chartre voet einsy. Et si qui Stannatorum prædictorum in aliquo deliquerint per quod incarcerari debeant per custodem prædictum arrestentur, & in prisona nostra de Leidfors & non alibi detineantur, quousq; secundum legem & consuetudinem Regni nostri deliberentur. Et en cest case que Esteynor soit prise pur felony & liverez au Gardein, il est suffert sovent aller a large de quoy grand perill avient moult de fois & aussi de ceo que la deliverance del dit Gaole nest passe fait une foitz en dis ans. Et que pis est per colour de mesme ceste article le dit Gardein prent hors d'autre prison les emprisonnes pur arrerages sur accompts, & les mette a Lydefors ou ilz sont in tant favores quilz my font force de jaymays fair gree alour seigniors.

Endroit de ceste article en soit enquiz diligemment devant les Justices que ore y serront proschemement assignes denquerre per quelle authority ilz y fait einsy de puis que en mesme la Charte sont exceptes per special tontz plees de terre & de vie, & de membre, & celle enqueste retourne soit declare en especial sil busoigne.

And according to this Act a Commission issued out in these words.



lectis & fidelibus suis \* Guidoni de Brian & Johan' de Montague, Rob' de Belknap, Hugoni de Segrave, Hen' Perchaie, & Walt' de Clopton, Salutem. Cum Dom. Edwardus quondam Rex Angliæ Avus noster per Cartam suam quam confirmavimus ad emendationem Stannariarum suarum in Com' Devon' ad tranquillitatem, & utilitatem Stannatorum suorum eandem concesserit pro se & heredibus suis, quod omnes Stannatores prædicti operantes in Stannariis illis quæ fuerunt dominica sua, dum operentur in eisdem Stannariis essent liberi & quieti de omnibus Placitis Nativorum, & de omnibus Placitis & querelis curiam suam & heredum suorum qualitercunque tangentibus; Ita quod non responderent coram aliquibus Justiciariis vel ministris ipsius Avi nostri vel heredum suorum de aliquo Placito vel querela infra prædictas Stannarias emergenti nisi coram custode Stannariarum prædictarum qui pro tempore fuerit: (exceptis Placitis terræ, vitæ, & membrorum,) nec recederent ab operationibus suis per summonitionem aliquorum ministrorum dicti Avi nostri seu heredum suorum nisi per summonitionem communem dicti Custodis, & quod quieti essent de omnibus tallagiis, theloniis, auxiliis, stallagiis, & aliis custumis quibuscunque in Villis, Portubus, Feriis & Mercatis infra Com' prædict' de bonis suis propriis. Concesserit etiam eisdem Stannatoribus quod fodere possunt Stannum & turbas ad stannum fundendum ubique in terris, moris & vastis suis & aliorum quorumcunque in Com' prædicto, & aquas, & cursus aquarum ad operationes Stannariarum prædictar' divertere, ubi & quoties opus fuerit, & emere buscam ad functuram Stanni sicut antiquitus fieri consuevit, sine impedimento ipsius Avi nostri vel heredum suorum, Episcoporum, Abbatum, Priorum, Comitum, Baronum, seu aliorum quorumcunque. Et quod custos prædictus vel ejus locum tenens teneat omnia Placita inter Stannatores prædictos emergentia, & etiam inter ipsos & alios forinsecos de omnibus transgressionibus, querelis & contractibus factis in locis in quibus operentur infra Stannarias prædict' similiter emergenti, & quod idem custos haberet plenam potestatem ad Stannatores prædict' & alios forinsecos in hujusmodi Placitis justiciandi & partibus Justiciam faciend' prout justum, & prius in Stannariis illis fuisset usitatum. Et si qui Stannatorum prædict' in aliquo delinquant per quod incarcerationi deberent, per custodem prædict' arrestarentur, & in prisona de Lydeford, & non alibi custodirentur, & deliberarentur, quousque secundum legem & consuetudinem Regni Angliæ deliberarentur. Et si aliqui Stannatorum prædict' super aliquo facto infra Com' prædict' non tangente Stannarias prædict' se posuerint in Inquisitionem patriæ, una medietas Juratorum Inquisitionis hujusmodi esset de Stannatoribus prædictis, & alia medietas de forinsecis. Et de facto totaliter tangente Stannarias prædict' fierent inquisitiones sicut fieri consueverint, sicut per inspectionem rotulorum Cancellariæ nostræ nobis constat. Ac etiam ex clamorosa insinuatione tam Magnatum quam Communitat' Com' prædict' in præsentī Parlamento nostro graviter conquerentium ad nostrum pervenerit auditum, quod Stannatores prædicti ac officarii, balivi & ministri dict' Stannariæ Cartam prædictam pro libito suæ voluntatis interpretantes, & debitum intellectum ejusdem Cartæ pervertentes, & etiam excedentes, ac quidam alii in magno numero asserentes se fore Stannatores cum non fuerint, habitis inter eos conspirationibus, confederationibus, & alligantiis, quamplurima extorsiones, oppressiones, falsitates, deceptiones, Cambipartias, ambidextras,

\* These two former were Barons and Lords of Parliament, and sat in the last Parliament of 50 E. 3.

Pleas of land, life and member are excepted.



*bidextras, manutenentias, transgressiones, damna, gravamina & excessus diversis subditis nostris dicti Com' colore Carte supradictae per plures vices fecerunt, & indies facere non desistant in nostri contemptum & ipsorum conquerentium grave praedictum, dicti Com' verisimilem destructionem & everisionem manifestam. Nos affectantes singulos subditos nostros sub quieto & debito regimine gubernare, & nolentes tanta maleficia, si per praedicti Stannatores, Officiarios, Ballivos vel Ministros, aut alios quoscumque perpetrata existunt, aliquantulum transire impunita; Assignavimus vos, quinque, quatuor, tres & duos vestrum, (quorum vos praefat' Robert' unum esse volumus) Justiciarios nostros ad inquirendum per sacramentum proborum & legalium hominum de Com' praedicti tam infra libertates quam extra, per quos rei veritas melius scire poterit, & aliis viis & modis quibus melius fore videritis de quibuscunque conspirationibus, confederationibus, alligantiis, extortionibus, oppressionibus, falsitatibus, deceptionibus, cambipartiis, ambidextris, manutenentiis, transgressionibus, damnis, gravaminibus & excessibus per quoscumque Stannatores vel alios in Com' praedicti factis, & per quos vel per quem, quibus personis, ubi & quibus temporibus, qualiter & quomodo, & de aliis articulis & circumstantiis praemissa qualitercunque tangentibus plenius veritatem; & ad praemissa omnia & singula tam ad sectam nostram quam dictorum conquerentium & eorum singulorum & aliorum quorumcunque pro nobis, aut pro seipsis prosequi volentium, audiend' & terminand' secundum legem & consuetudinem Regni nostri Angliae: Salvis semper dictis Stannatoribus libertatibus & privilegiis eis per Cartam praedictam concessis. Et ideo vobis mandamus quod ad certos diem & loca quos, vos, quinque, quatuor, tres vel duo vestrum (quorum vos, praefat' Robert' unum esse volumus) ad hoc provideritis diligenter super praemissa faciatis inquisitiones; & conspirationes, confederationes, alligantias, extortiones, oppressiones, falsitates, deceptiones, cambipartias, ambidextras, manutenentias, transgressiones, damna, gravamina, & excessus praedicta audiat' & terminetis in forma praedicta, facturi inde quod ad justiciam pertinet, secundum legem & consuetudinem Regni nostri Angliae. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vic' Com' praedicti quod ad certos diem & loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos praefat' Robert' unum esse volumus) ei Scire fac', Venire fac' coram vobis quinque, quatuor, tres vel duobus vestrum tot & tales probos & legales homines de baliva sua tam infra libertates quam extra, per quos rei veritas melius sciri poterit & inquire. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westm' Sexto die Julii, Anno Regni nostri Angliae 50. Regni vero nostri Francia 37. Per consilium in Parlamento.*

*But what was done upon this Commission we have not yet found.*

Rot. Pat. 8 R.2.

*The said Charter of 33 E. 1. to the Tynners of Cornwall was confirmed.*

Rot. Pat. Anno

1 E. 4.

Rot. Pat. 3 H.7.

*And the Charter of 33 E.1. to the Tynners of Devon' was also confirmed. The like confirmation to the Tynners of Devon'.*

*See the Statute of 11 H.7. cap.4. concerning Tunnage and Weights.*

Mich. 4 Jac. In  
Camera Stellata.

*It was resolved by the whole Court that Stannum, Tyn, otherwise white-lead, nor black lead, nor any other base metal did belong to the King by his Prerogative, as gold and silver do, albeit there may be tried out of the base metal*

metal Gold or Silver, but that is as the s&ed or strength of the base metal, which being extracted becomes defective.

There be Five kinds of base metals, viz. *Æs*, five Cuprum (because it was found out, as some hold, in Cypro) Copper, Stannum *Ælynne*, Ferrum Iron, Plumbum Lead, & Orichalcum Latin. Polybius 209 years before Christ wrote that this Island was abundantly stor&ed with *Ælyn*. Britanni qui juxta \* Belerium promontorium incolunt mercatorum usu, qui eo Stanni gratia navigant, humaniores reliquis erga hospites habentur, hii ex terra saxosa cujus venas sectati effodiunt Stannum igne educ&um in qu&dam Insulam ferunt Britannic&am juxta, quam vect&am vocant: Ex hii& Insulis mercatores emptum stannum in Galliam portant, inde diebus fere triginta cum equis ad fontem Eridani fluminis perducunt.

*S&e* M. Camden, pa. 134. in Cornwall.

And for as much as *Ælynne* is a Staple commodity, let us in the next place treat of the Court of the Mayor of the Staple.

Polybius lib. 3.  
Plinius lib. ca. 8. 9.  
Diodorus Siculus  
lib. 5. ca. 8. fo. 142.  
floruit sub Augusto.  
\* Aut Vest&um, i. e.  
the Cape of Cornwall.

## C A P. XLVI.

### *The Court of the Mayor of the Staple.*

**T**His Court is guided by the Law Merchant, which is the Law of the Staple, and is holden at the Wool-staple at Westm. And there are also two Constables, *a* and a certain number of Correctors to do that which pertaineth to their Office, as in other Staples is accustomed.

This Court (though it was far more ancient) is strengthened and warranted by Act of Parliament, which can best exp&rets the jurisdiction thereof, and followeth in these words.

*Item*, because the Staples cannot long continue, nor the Ordinances thereof made and to be made be kept, if good Executors and Justices be not established to make thereof good and ready execution: We have ordained and established, that in every Town where the Staple is ordained, a Mayor, good, lawful, and sufficient shall be made and established, having knowledge of the Law Merchant, to govern the Staple, and to do right to every man after the Law aforesaid, without favour, sparing, or grief doing to any. And in every place where the Staple is, shall be two convenable Constables now at his beginning put by us, to do that pertaineth to their office, as in other Staples is accustomed; and when they shall be dead or changed, then other shall be chosen by the Comminalty of the Merchants of the said places. And that no Mayor hold the Office over the year, unless he be newly chosen by the Comminalty of the Merchants, as well of Strangers, as of Denizens. And that the said Mayor and Constables have power to keep the peace, and to arrest offenders in the staples for debt, trespass, or other contract, and them to put in prison, and punish after the Law of the Staple. And a prison shall be ordained for the safe keeping of them that so shall be imprisoned. And the Mayors, Sheriffs, and Bailiffs of the Towns, where the Staple is, or joyning to the Staple, shall be attending to the Mayor and Ministers of the Staple to do execution of their commandments upon pain of grievous forfeiture: and one Lord or other of the most sufficient in the Country where the Staple is, shall be assigned to

*a* 27 E. 3. cap. 22.  
See the first part  
of the Institutes.  
Sect. 3. verb. *in*  
*la Ley. m.*  
27 E. 3. cap. 19.

27 E. 3. Stat. 2. c. 21

¶ *The Jurisdiction.*

The Law Merchant.



be aid to the Mayor and Ministers of the Staple to justifie the Rebels, which by the said Mayor and Ministers cannot be justified, and to maintain and counsel them when need shall be to the good governance of the Staple, and to redress at every mans complaint that that shall be done amiss by the said Mayor or Ministers, or other, and to do right to the complainants in this behalf. And that the same Mayor and Constables do not, nor ordain any thing contrary to this Ordinance, nor make interpretation nor exception to them otherwise then the words do purport, but if there be any thing that is doubted, it shall be shewed to our Council, and there declared by good advice.

*a* 36 E.3. cap.7.  
Rot. Par. 6 H.6.  
nu.29.

*a* See the Statute of 36 E. 3. cap. 7. That Merchant strangers may either sue before the Mayor of the Staple according to the Law Merchant, or at the Common Law.

*b* 28 E.3. ca.15.  
*The bounds of the Staple.*

*b* The bounds of the Staple at Westm. begin at Temple Bar, and extend to Tutchill. In other Cities and Towns, within the walls: where no walls be, the bounds of the Staple shall extend through all the City or Town.

*c* 27 E.3. ca.8.  
28 E.3. ca.13.  
Rot. Cart.

*c* See 27 E.3. how trial shall be had per medietatem linguæ: & vide 11 E. 1: Cart Mercator.

*d* 31 E.1. nu.44.  
*d* 27 E.3. cap.9.  
F.N.B.131.d.  
Pl.Com.62.b.

*d* See the Statute of 27 E.3. that the Mayor of the Staple may take Recognisances of debt under the Seal of the Office, but not with the seal of the party, and how execution shall be done thereupon.

*e* 15 H.7.16.  
Fleta lib.2. ca.57.  
See 5 H.4 ca.12.  
*e* 23 H.8. cap.6.

*e* The Mayor of the Staple at Westm. and the Recorder of the City of London, in the absence of the two Chief Justices, out of Term have power to take Recognisances of debts according to the form of the Statute of 23 H.8. And this is in nature of a Statute Staple, but it hath besides the seal of those that take it, the seal of the party.

*f* 27 E.3. cap.23.

*f* The Mayor and the Constables shall be sworn in the Chancery to do lawfully that which pertain unto them.

*g* 8 H.6. cap.17.

*g* There are five Staple merchandises of England, viz. Wool, Woolfells, Leather, Lead, and Tynne.

*h* 27 E.3. cap.8.  
Dier 4. Mar.144.  
*i* Vid. Cart. Mercator. ubi sup.  
Merchants, as well  
Strangers as Sub-  
jects, and Mer-  
chandises.  
*k* Able to furnish  
the King with  
money.

This word Staple, anciently written *h* Estaple, cometh of the French word Estape, which signifieth a Mart or Market. So as the Court of the Staple is, as much to say, as the Court in the Staple Market, and is incident to that Market, *i* and it was oftentimes kept at Callice, and sometimes in Bridges in Flanders, and at Antwerp, Middleburgh, &c. (and therefore it was necessary that this Court should be governed by Law Merchant) and at several times in many places within England, and now (as hath been said) is kept at Westm.

*l* Rot. Parl. 7 E.4.  
nu.9.  
12 E.4. nu.59.  
Rot. Parl. 9 R.2.  
nu.4.  
*l* Original de Scac.  
7 E.3. Rot.9.

We use for this word Staple, Stapula, as Major Stapulæ, Statutum Stapulæ &c. And we may truly say that we have not umbratilem Stapulam, which in times past was so renowned and beneficial as it enriched every place where it was holden, and it was commonly said, that riches followed the Staple.

See the Statute of 2 E.3. cap.9. and a Writ thereupon. 7 E. 3. in Scaccario. *l* Et Original de Scaccario Anno 12 E.3. Rot. 2. ibid. 13 E.3. Rot. 12. & Rot. Pat. 15 E. 3. 2 part. See the Statute of the Staple Anno 27 E. 3. through all the Chapters, 36 E.3 cap.7. 28 E.3. cap.13, 14. 43 E.3. ca.1. 12 R.2. cap.16.



## C A P. XLVII.

*Of the legal Courts and their Jurisdictions within the  
Principality of Wales.*

**T**his Principality consisteth of 12 Counties, whereof 6. viz. Anglisea, Carnarvan, Merioneth, Flint, Carmarthen, and Cardigan were erected by the Act intituled Statutum Walliæ Anno 12 E. 1. *b* and the rest by the Statute of 27 H.8.

Wallia, Wales, so called by the Saxons *Brytwealus*, unde Wallenses, *c* Walli, *i.* exteri seu peregrini: and the Britons call Englishmen to this day *Sailons*: these are of the posterity of the ancient Britains inhabiting on the West part of great Britany. This was sometime *d* a Realm or Kingdom, and governed per suos regulos. *e* Rex E. dedit Regi Griffino totam terram quæ jacebat trans aquam quæ vocatur *f* Sed postquam ipse Griffin forisfecit ei, abstulit ab eo hanc terram, & reddidit Episcopo Cestræ & omnibus suis hominibus, qui ante ipsam tenebant.

*g* By force of a Commission directed to divers discret and learned men as well English as Welsh, viz. Griffith ap Lluellin, Gitten Owen, John King and others, it was found that Owen ap Meredith ap Theodore which married Katherine daughter of France and Dowager of King H. 5. was lineally descended from *h* Cadwallader King of the Britains, and gave the Arms of the Princes of Wales.

And here we are justly occasioned to discover the error of those that have given to our late Sovereign Lady Queen Elizabeth, of ever glorious and blessed memory, the surname of Tydur, and consequently to her Grandfather, Father, Brother, and Sister: which whether it were out of ignorance or malice some do question, because if she had any surname at all it was Theodore and not Tydur, which is a nick or by-name. But we rather take it to grow out of ignorance, for that in truth she had no surname at all: for this Owen her Ancestoy had no surname: and therefore was called Owen ap Meredith, that is, the son of Meredith ap Theodore, (the son of Theodore) ap Grono, &c. All which were Christian names: so as they should rather have called her Elizabeth Owen, his own name, or Elizabeth Meredith, his fathers name, then Theodore his Grandfathers Christian name: but Almighty God would not suffer her to have a surname, because by his grace and goodness she should deserve for her Imperial virtues to be called Elizabeth the Great.

*k* But jure feodali the Kingdom of Wales was holden of the Crown of England, and thereby as Bracton saith, was sub potestate regis. And so it continued until the 11 year of the Reign of King E. 1. when he subdued the Prince of Wales rising against him, and executed him for Treason, whereof Fleta who lived in those days speaketh thus. Et unico malefactori plura poterunt infligi tormenta, sicut contigit de Davide Principe Walliæ cum per Edwardum quinque judiciis mortalibus torquebatur suis namq; meritis exigentibus, detractus, suspensus, dismembratus fuit & combustus, cujus caput principali Civitati, quatuorq; quarteria ad quatuor partes regni in odium tradit deferrebantur suspendend'.

*m* The next year, viz. in the 12 year of King E. 1. by authority of Parliament it is declared thus, speaking in the person of the King (as ancient Statutes were

See W. 1. cap. 19; the second part of the Institutes, pa. 195.

Stat. Walliæ

Anno 12 E. 1. in

vet. Mag. Car. 1.

part 2. fo. 3.

*b* 27 H. 8. cap. 26.

34 H. 8. c. 26.

*c* Lamb. Verb.

Wallus.

15 E. 3. Record

38. & tit. Error.

2 H. 5. cap. 6.

19 H. 6. fo. 12.

*d* Realm from the

French word

*Roiaume*, and both

*a Regno*.

*e* Domesday in

Com. Cestr. Ep.

Cestr.

*f* Domesday in

Com. Hereford.

Rex in Arenfield.

Rex Griffin & Ele

vastaverunt hanc

terram T. E.

Quandoque Rex

Griffin nominatur

Rex Mariadoc.

*g* Rot. Pat. Anno

7 H. 7.

*h* Cadwallader

King of the Pri-

tains, Mat. Parker

Archiep. M. S.

*i* This blessed

Queen reigned

the years of Au-

gustus, and lived

the age of David,

*a* King elder then

any King or

Queen since the

Conquest, and

yet had *vegetum*

*corpus & vividum*

*ingenium*.

*k* Lib. 7. fo. 21. b.

In Calvins case.

Tr. 5 E. 3. 40.

alien *Eractio*

(who wrote *tem-*

113. *m* Statutum

port H. 3.) lib. 5. fo. 395. b. Fleta lib. 1. cap. 16. 10 H. 4. fo. 6. acc'. Pl. com. 129. a. b. Dier 3. Maria Walliæ Anno 12 E. 1. Vid. 10 H. 4. fo. 6.



\* Note, divers Monarchs hold their Kingdom of others *jure feodali*. As the Duke of Lumbardy, Cicill, Naples, and Bohemia of the Empire. Granado, Leons of Aragon. Navarre, Portugal, of Castile. And so others. Dorf. Claus.

15 E. 2. m. 13. *De Wallensibus ad Parl. apud Eborum senire fac* viz. 24 *de discretoribus, legalioribus & validioribus hominibus de partibus South-wallie; & 24 de partibus North-wallie.*

Ror. Claus.

20 E. 2. m. 3. acc.

21 Jac. ca. 28.

b 27 H. 8. ca. 26.

34 H. 8. ca. 26.

37 H. 8. ca. 26.

18 Eliz. cap. 7.

c The twelve Counties of Wales.

d Trin. 34 Eliz. in the case of Morgan of the report of the Chief Justice Popham.

So it was resolved by divers Justices in Hil. 5 Jac. Regis.

21 Jac. regis c. 10.

Hil. 5 Jaci

Ror. Claus. Anno 20 E. 2. m. 3.

wont to do) Divina providentia, quæ in sua dispositione non fallitur, inter alia suæ dispensationis munera, quibus nos & regnum nostrum Angliæ decorari dignata est, terram Walliæ cum Incolis suis prius nobis \* jure feodali subjectam jam sui gratia in proprietatis nostræ dominium, obstaculis quibuscunque cessantibus, totaliter & cum integritate convertit & coronæ regni prædicti, tanquam partem corporis ejusdem annexuit & univit. Yet this wise and warlike Nation was long after this not satisfied nor contented, and especially, for that they truly and constantly took part with their rightful Sovereign and liege Lord King Richard the Second; In revenge whereof they had many severe and invidious Laws made against them in the Reigns of H. 4. H. 5. &c. All which as unjust are repealed and abrogated. And to say the truth, this Nation was never in quiet, until King H. 7. their own Countryman obtained the Crown. b And yet not so really reduced in his time, as in the Reign of his Son King H. 8. in whose time by certain just Laws made at the humble suit of the Subjects of Wales, the Principality and Dominion of Wales was incorporated and united to the Realm of England; and enacted that every one born in Wales, should enjoy the Liberties, Rights, and Laws of this Realm, as any Subjects naturally born within this Realm should have and inherit, and that they should have Knights of Shires, and Burgesses of Parliament, &c. By the which the Jurisdiction of the legal Courts are thereby so perfectly and plainly established and declared, and their proceedings to be according to the Laws and Customs of England, as we have thought good to refer the judicious Reader to those Acts of Parliament without recital of them, where he shall find the excellent venerable variety of Seats and Courts of Justice, with their proper Jurisdictions according to the Laws of England, the golden Metwand, whereby all mens causes are justly and evenly measured. Only we will add certain things which have not been published before.

By the said Statute of 34 H. 8. it is enacted that there shall be holden and kept Sessions twice every year in every of the said c twelve Shires, that is to say, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, Cardigan, Mountgomery, Denby, Flint, Carnarvan, Merioneth, and Anglelie, which Sessions shall be called the Kings great Sessions of Wales.

d A fine was levied of Lands in the County of Carmarthen, and the Writ of Covenant was Coram Justiciariis nostris magnæ Assisæ in Corn Carmarthen, and because all the judicial presidents were in that form ever since the making of the Statute, it was adjudged to be good, for Communis error facit jus.

Also in the said Act of 34 H. 8. it was enacted, that the Kings most Royal Majesty should from time to time change, &c. all manner of things before in that Act rehearsed, as to his most excellent wisdom and discretion should be thought convenient, and also to make Laws and Ordinances for the Commonwealth of his said Dominion of Wales at his Majesties pleasure, &c. And albeit the common opinion was, that the same power in so high a degree of trust, as the alteration of Laws, &c. was personal to H. 8. and referred to his wisdom, discretion and pleasure, and therefore extended not to his successors, yet for that the Subjects of the Country and Dominion of Wales had been constantly loyal and obedient, and had lived in all dutiful subjection to the Crown of England, to prevent all questions and danger, the said branch of the said Statute of 34 H. 8. is repealed and made void.

It was resolved by all the Justices upon a reference made to them by the Lords of the Privy Council upon consideration had upon the Statutes of 34 H. 8. cap. 26. and 18 Eliz. cap. 8. that the Justices in Wales are to be constituted and made by Letters Patents, as they had been ever since the making of the Statutes, and not by Commission. And upon report of their opinion to the Lord Chancellor Baron Snigge was constituted and made by Patent accordingly.

Rex dilecto & fideli suo Ricô Damory Justiciari suo Northwalliæ Salutem. Mandamus vobis quod habito advisamento cum illis hominibus de partibus prædictis, cum quibus melius fore videritis faciendū diversimode sine dilatione venire faciatis



faciatis ad præsens Parliamentum apud Westm. convocatum 24 homines de partibus illis tam Anglicos quam Wallenses ad consentiendum hiis quæ ibid. pro communi commodo & pace & tranquillitate Regni nostri & partium præd. favente Domino contigerit ordinari, Et habeatis ibi nomina præd. 24 hominum, & hoc bñe. Teste Rege apud Kenilworth 11 Januarii Anno 20 E. 2. Rot. Claus. m. 3.

12 were English and 12 Welsh Rot. Claus. 15 E. 2. in dorf. m. 13. Wallenses vocat. ad Parliamentum.

By this and others of like nature it appeareth that Welshmen were in the Reign of E. 2. E. 3. called to our Parliaments.

But now seeing there be Sheriffs throughout all Wales, the Writs are directed to the Sheriffs to cause to be elected Knights, Citizens, and Burgeses, and retornable into the Chancery, where before they were retorned into the Parliament.

7 H. 4. c. 15. 11 H. 4. c. 1. 1 H. 5. cap. 1. 8 H. 6. c. 7. 10 H. 6. c. 2. 23 H. 6. c. 15. 6 H. 6. c. 4. 27 H. 8. c. 26. 24 H. 8. c. 26. 35 H. 8. c. 11.

We have seen a Charter of the Earl of Arundell proving, that by the ancient custom of Wales, females could not inherit.

Omnibus Christi fidelibus præsens scriptum inspecturis Johannes Comes Arundel & Dominus de Mautravers, Salutem in Domino. Sciatis nos prædict. Comitem ad prosecutionem & specialem supplicationem Communitatis Tenen' nostrorum tam duarum partium quam tertiæ partis Dominii nostri de Ofewaldestrie in Marchia Walliæ concessisse pro nobis & hæredibus nostris & per præsentis confirmasse Tenen' nostris prædict', hæred' & assignis, suis, quod eorum filiarum pro defectu exit' masculini, ac eorum proximi consanguinei, tam masculini quam femellæ de cætero hæreditare valeant imperpetuum terras, tenementa & reddit' antecessorum & consanguineorum suorum ubique infra Dominium nostrum præd' eisd' modo & forma quibus utitur in communi lege Angliæ, Wallica consuetudine prius ibid. de contrario usitat' in aliquo non obstante: Salvis semper nobis & hæred' nostris heriotis, releviis, sect' cur' & al' consuetudinibus quibuscumq; de dictis terris & tenementis ante hanc nostram concessionem nobis quomodolibet pertinen'. In cujus rei testimonium huic præsentis scripti nostro concessionis Sigillum nostrum fecim' apponi: Hiis testibus, Willielmo Rymam, Thoma Baret, Willielmo Sideney Armigeris, Hugone Burgh, cœn Dominii nostri præd', Rich. Ireland, Hoel ap Ogn Gouch, & aliis. Dat' in hospitio nostro London vicesimo quinto die mensis Aprilis An. Regni Regis Henrici Sexti post conquestum Octavo.

Marchia Walliæ,

Wallica consuetudo.

At this day women are inheritable in Wales according to the Common Law in England.

\* Ordinatio de consuetudinibus Northwalliæ & Westwalliæ,

\* 9 E. 2. m. 3. 4 Rot. Par. 4 H. 4. nu. 100. 6 Rot. Par. 12 E. 1. m. 21. Vid. Hil. 20 E. 1. coram Rege. Ro. 37. 22 Wallia. Pasch. 10 E. 2. coram Rege. Rot. 37. 18 E. 2. Rot. 73. Trin. 5 E. 3. Rot. 40. coram Rege. c Hil. 18 E. 2. Rot. 73. cor. Rege. Gloc. 18 E. 2. Ass. 382. Rot. Parl. 18 E. 1. Rot. 3. 13 E. 3. jurisdiction. 33. 28 E. 2. c. 2. 5 E. 3. f. 30. 45 E. 3. br. 588. 21 H. 3. br. 881. simile. d 1 H. 5. cap. 6. 25 H. 6. nu. 33.

These Britons were ever lovers of the Laws of England, for at the Parliament holden a in 4 H. 4. they petitioned the King, that in all cases of the Crown throughout every Liberty in Wales the Laws of England might be only used. Whereunto the King yielded, and that his Council should take order therein.

b Quia Episcopi Wallenses ex antiqua consuetudine testamentum aliquod condere non potuerunt, Rex licentiam dedit Episcopo Bangor, quod possit condere testamentum suum non obstante quod Episcopi Wallenses ex antiqua consuetudine testamentum aliquod condere non possunt. See the Chapter of the Consistory Courts of Archbishops and Bishops, fol.

c Where execution shall be made of lands in the Marches by the Sheriff of the County next adjoyning, sicut solebat antiquitus. See the Record at large.

d Assach is a British word and signifieth a custom in Wales, which was to excuse one of the death of a man by the oath of 300 men. But this strange kind of excuse or acquittal is abrogated by Statute.

e There was also a certain trial in Wales called a Raythe, but that is also abrogated.



## CAP. XLVIII.

*The Court of the President and Council in the Dominion and Principality of Wales, and the Marches of the same.*

**L**aying now the Legal Courts in the Dominion of Wales, to proceed by the right rule, secundum legem & consuetudinem Angliæ, Let us speak somewhat of the Court of Equity before the President and Council there.

This Court is strengthened and warranted by the Statute of 34 H.8. cap.26. with a reference to prescription before it, in these Words.

*Item*, That there shall be, and remain a President and Council in the said Dominion and Principality of *Wales*, and the Marches of the same, with all Officers, Clerks, and incidents to the same in manner and form as heretofore hath been used and accustomed: which President and Council shall have power and authority to hear and determine by their wisdoms and discretions such causes and matters as be, or hereafter shall be assigned to them by the Kings Majesty, as heretofore hath been accustomed and used.

They sit by force of the Kings Commission and Instructions, and proceed as in a Court of Equity by their wisdoms and discretions. Herefordshire, Worcesterhire, Shrophire, and Gloucestershire are included within this Commission, pretending that these Four Shires are within the Marches of Wales.

That these Four Shires are no part of the Marches of Wales but ancient Shires of the Realm of England, appeareth by six manner of proofs.

First, By express Words, viz. 18 E.2. Ass.82. 1 E.3.14. in Dower. 7 E.3. 9 E.3. in Dower. 6 H.4. fol.9. in Scire fac. F.N.B. 168.

Secondly, By Acts of Parliament, viz. Prærog. Regis. 17 E.2. cap.1. 28 E.3. cap.2. 2 H.4. ca.12. & 16,17. 23 H.6. c.5. 27 H.6. c.4. 31 H.6. c.4. 32 H.8. cap.13. 13 El. cap. 13.

Thirdly, By Records of Parliament. 3 R.2. nu. 29 & 30.

Fourthly, By reason, 1. These four Shires were ancient English Shires, and governed by the Laws of England, and not by the discretion of the President and Council: and this were to bring their inheritances, goods, &c. ad aliud examen. 2. At one and the same time there were in former times Earls of the Marches of Wales, and several Earls of these four Counties, and therefore they could not be one and the same.

Fifthly, By the resolution aforesaid of those four Judges concerning Cheshire and Flyntshire (which were included also within the Commission) that they were not within the Marches of Wales, and therefore out of the jurisdiction of the President and Council, and so remain until this day: for a Commission without an Act of Parliament cannot raise a Court of Equity, as often hath been said before.

Lastly, By the commandment of the King, all the Justices of England, and Barons of the Exchequer were assembled concerning the jurisdiction of the President and Council of Wales, and the Marches of the same, who upon hearing of Council learned on divers days, and upon mature deliberation resolved unavocce, that the said Four Counties were not within the jurisdiction of the President and Council. 2. That soasmuch as the President and Council have

Rot. Par. 16 R.2.  
nu.44. there was  
a President of  
Wales.  
34 H.8. cap.26.

See before in the  
Chapter of the  
County Palatine  
of Chester. p.212.

Mich. 2 Jac. Regis  
the care of Edw.  
Lord Zouch Presi-  
dent of Wales.

a li



a limited authority if they proceed in any matter that is out of their jurisdiction either in respect of the place, or of the authority limited to them, a prohibition may be granted, as to the Marshallea and the like. Which resolution being made known to his Majesty, his Majesty was graciously pleased, that the Lord Presidents Commission should be reformed: whereupon the Lord Zouch gave over his place. And yet the Commission was not after reformed in all points, as it ought to have been.

Regist. 4 & 8.  
F.N.B. 39.b.45.f.  
46.a.171.159.  
185, 186, 187.  
19 H.6.54.

Rodry Maure, or Rodry the great, King of Wales, son of Mersyn Fryth had issue three sons, Mervyn, Anarawd, and Cadellh. In the year wherein he died, viz. An. Dom. 877. (King Alfred, alias Alured, then reigning in England) this great Rodry divided his Kingdom of Wales into three Principalities. The first he called Guyneth, the English North-Wales, the Latin Venedotia. The second Principality was called Powis land, in Latin Powilia, of some West-Wales, bordering upon England. The third he called Dehevbarth, the English South-Wales, in Latin Demetia. The first Principality, some say, he gave to Mervyn, after others, to Anarawd. The second to Anarawd, some say, to Cadellh. The third to Cadellh, some say, to Mervyn. The first was the best, because it was the quietest. The second was often invaded and troubled by the English. Into the third often incursions were made by the English, the Norman, and the Fleming. The division of this Kingdom (howsoever it was) wrought in process of time such a division between these Princes, as it was never quiet until it came under one Monarch and King again: For the Royal dignity of a Monarch or King, from whence all other subordinate dignities, tanquam lumen de lumine, are derived without any diminution, will suffer no division. Regia dignitas est indivisibilis; & quælibet alia derivativa dignitas est similiter indivisibilis.

This is added for the better understanding of Records and Histories concerning Wales.

The most woful event that fell out in this Realm, when Gorbodug divided this Kingdom between his two sons, Ferrex and Porrex, and what heavy event came to pass, until it was reduced again under one Monarch, let our Histories tell you: And letting pass others, I cannot over-pass the miserable estate which in this Kingdom under the Heptarchy, until all was reunited under one Sovereign. And this is the reason, that in England, Scotland, and Ireland, the Royal dignity is descendible to the eldest daughter or sister, &c.

But let us look a little into foreign parts. Oedipus King of the Thebanes had issue two sons, Polynices, and Eteocles: he ordained, that after his decease, his two sons should alternatim by course, &c. Reign in his Kingdom. But what was the event? Fratres de Regni hereditate dissidentes singularem congressum mutuis vulneribus ceciderunt. But to return again to our Wales.

Stat. in Theb.

It is divided from England by a ditch after the name of that King that made it, called King Offa his ditch.

Cambden in the County of Radnor.

King E.3. at the Parliament holden Anno 17. of his Reign, by Charter established by Authority of Parliament, created Edward (called the black Prince) Prince of Wales in these words, De Concilio Prælatorum, Comitum, Baronum & Communium in generali Parlamento nostro apud Westm' die Lunæ in Quindena Paschæ proxime præterito convocato ipsum Edward' Principem Walliæ fecimus & creavimus, & dictum Principatum sibi dedimus & concessimus, & per Cartam nostram confirmavimus, ac ipsum de dicto Principatu, ut ibidem præficiendo præsideat, & præsidendo dictas partes dirigat & defendat, per a fertum in Capite, & annulum in digito aureum, ac b virgam argenteam investivimus juxta morem: Habendum & tenendum de nobis sibi & hæredibus suis Regibus Angliæ imperpetuum, &c. Out of this Charter we observe, that in this Creation there is a great mystery, for less then an estate of inheritance so great a Prince could not have, and an absolute estate of inheritance in so great a Principality as Wales, the Kings meaning was (this Principality being so dear unto him) he should not have: therefore a qualified fee therein he had in this form, sibi & hæredibus suis Regibus Angliæ, that by his decease, or attaining to the Crown this dignity might be extinguished in the Crown, to the end that the

Carta creationis Principis Walliæ Authoritate Parliamenti. Anno 17 E.3.

a A Chapelet of gold made in form of a Garland.  
b This virge, rod, or Scepter in latter creations for more honor is changed from silver to a Verge or Scepter of gold.  
Sibi & hæredibus regibus Angliæ.

King



See the Princes  
case. Lib. 5.

Vide Cartam E. 3.  
dat. apud Pontem  
fract. 18 Martii.  
7 E. 3. & Hil. 33 E.  
3. irrotulat' in  
Scaccario ex parte  
Rememorator' The-  
saur'. Rot. 15. The  
Black Prince crea-  
ted Earl being  
three years old.  
\* Hil. An. 20 E. 1.  
Corā Rege Rot.  
14. Walliæ.  
† Commissionarii.

Inauditum est.

Irrotulatur istud  
Recordum inter  
Placita de Banco  
Term' Pasc. An.  
14 E. 1.  
a Ortelius in Car-  
ta antiqua Britan-  
niæ.  
b Humph. Lloyd  
apud Ortelium in  
the same Geograp.  
c Idem in Fragm.  
Britan' Historiæ.  
d Tacitus. Vide  
supra p. 9.  
e Nota Validissi-  
mas gentes.  
f Rot. Pat. 9 E. 2.  
m. 3.  
g Lib. Int. Co. fol.  
549, 550.

King for the time being should ever have the honor and power to create his heir apparent Prince of Wales, as he himself had been by his Progenitor. But otherwise it is in case of the Duchy of Cornwall as in the Princes case, ubi sup. appeareth.

And in the same manner is the dignity of the Noble and primary County Palatine of Chester at the same time granted to the Prince, sibi & hæredibus suis Regibus Angliæ.

\* Ob quamplurimos excessus more hostili vexillo displicato per Gilbertum de Clare Comitem Glouc' Hertf. & homines suos de Morgannon illatos contra Humfredum de Bohun Comitem Heref. & Essex & homines suos de Brekenock, Dominus Rex assignavit † Episcopum Eliens. & alios Commissionar' ad inquirendum, &c. Mandavit etiam Dominus Rex per literas suas dilectis & fidelibus suis Johanni Hastings, Johanni fil' Reginaldi, Edmundo de Mortuo mari, Rogero de Mortuo mari, Theobaldo de Verdon, Johanni Tregose & Galfrido de Cannil, quod interfint apud Brekenock, &c. Et postea venerunt apud Lanndon. Voluit idem Dominus Rex pro statu & jure suo per ipsos Justiciarios quod inde rei veritas inquiretur per sacram' tam magnatum, quam aliorum proborum, & legalium hominum de partibus Walliæ & Com' Glouc' & Heref. per quos, &c. cujuscunque conditionis fuissent, ita quod nulli parceretur in hac parte, eo quod res ista Dominum Regem & Coronam & dignitatem suam tangit, &c. Dictum est ex parte Domini Regis Johanni de Hastings & omnibus aliis magnatibus supra nominatis quod pro statu & jure Regni, & pro conservatione dignitatis Coronæ & pacis suæ apponant manum ad librum, ad faciend' id quod eis ex parte Domini Regis injungeretur: Qui omnes unanimiter respondent, quod inauditum est quod ipsi vel eorum antecessores hæcenus in hujusmodi casu ad præstandum aliquod sacramentum coacti fuer', &c. Ac pluries eisdem magnatibus ex parte ipsius Regis conjunctim & separatim, libroque eis porrecto, injunctum est quod faciant sacram'; Responderunt demum omnes singulatim quod nihil inde facerent sine consideratione Parium suorum. Demum Comes Glouc' fecit finem cum Domino Rege pro decem millibus Marcarum, & Comes Essex pro mille marcis, & uterque eorum committitur Marechallo. (Recordum perlongum est, & continet tres rotulos.) Et ob affinitatem, & consanguinitatem cum Rege perdonantur plurima. Tamen forisfecerunt libertates suas durante vita ipsorum. Et post decessum eorum, hæredes sui rehabeant.

But now to take our leave of this Principality of Wales, this is that the Romans called by the name of a Britannia secunda, and sometimes b Valentia, and by the Britains themselves called c Cambria. And we will conclude this Treatise of Wales, &c. with that which that d excellent Historian speaking of the wars between the Roman and the ancient Britain, saith, Nec aliud adversus e validissimas gentes pro nobis utilius, quàm quod in comune non consulunt, rarus ad propulsandum comune periculum conventus: ita dum singuli pugnant, universi vincuntur.

f Sæ 2 part. Pat. 9 E. 2. m. 3. Ordinat' de consuetud' North-walliæ & West-walliæ.

g Vid. Lib. Int. Co. fo. 549, 550. Thæe notable matters concerning Wales. 1. Of the government of Wales before 27 H. 8. 2. Of Lordship, Marchers, and their authorities and liberties. 3. The Act of 1 & 2 Ph. & Mar. concerning the same.

## CAP. XLIX.

*The President and Council in the North.*

**T**his Council is neither warranted by Act of Parliament, nor by prescription, but raised by King H. 8. by his Commission upon these occasions, and in the manner hereafter expressed. After the suppression of Monasteries of the yearly value of two hundred pound or under, which was by Act of Parliament 4 Febr. Anno 27 H. 8. in the beginning of 28 H. 8. there was a great insurrection of the Lord Hussey and 20800 persons in Lincolnshire, pretending it to be for the cause of Religion: against whom Charles Brandon Duke of Suffolk went and appeased them. As soon as they were appeased, a great Rebellion for the same pretence of 40000 of that County, of whom Sir Robert Aske was Leader: against whom the Duke of Norf. and others went, and dispersed them. Soon after a great Commotion for the same pretence was raised in Lancashire of men in that County, and in Cumberland, Westmerland, and Northumberland: against whom the Earl of Derby was employed, and quieted them. After this Musgrave Tilly and others to a great multitude did rise, and assaulted Carlisle Castle, whom the Duke of Norf. overthrew. Soon after Sir Francis Bigot with a great number of people rose at Settrington, Pickering, Leigh, and Scarborough in Yorkshire, whom the Duke of Norf. pacified. And after this the Lord Darcy, Ask, Constable, Bulmer, and others began a new Rebellion about Hull in Yorkshire, whom the Duke of Norf. appeased. And all these Rebellions fell out between the beginning of 28 H. 8. and 30 H. 8.

The King intending the suppression of the great Monasteries, which in effect he brought to pass in Anno 31 H. 8. for preventing of future dangers, and keeping those Northern Counties in quiet, in Anno 31 of his Reign raised a President and Council there, and gave them besides two several powers and authorities under one Great Seal, the one of Oier and Terminer, De quibuscunque congregationibus & conventiculis illicitis coadunationibus, confederationibus, Lollardiis, misprisionibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, contemptibus, falsitatibus, manutenentiis, oppressionibus, violentiis, extortionibus, & aliis malefactis, offensis, & injuriis quibuscunque, per quæ pax & tranquillitas subditorum nostrorum in Com' Eborum, Northumberland, Westmerland, Durham & Com' Civitatis Eborum, Kingston super Hull, & Newcastle super Tinam gravetur, &c. secundum legem & consuetudinem regni nostri Angliæ, vel *a* aliter secundum sanas discretionem vestras audiend' & terminand'. The other Authority was, *b* Nec non quascunque actiones reales, seu de libero tenemento, & personales causasque debitorum & demandorum quorumcunque in Com' prædictis, quando ambæ partes vel altera pars sic paupertate gravata fuer', quod commodè jus suum secundum legem regni nostri aliter prosequi non possit, similiter secundum leges & consuetudines regni nostri Angliæ, vel aliter secundum sanas discretionem vestras audiend' & terminand'.

But these authorities were granted, to the end that Commissioners by mediation might quiet controversies when one of the parties or both were poor, who are ever most clamorous. And all the Authority they had was expressed in the Patents or Commission under the Great Seal, without any reference to instructions, or any instructions at all. But afterwards, for that the said Commission was against Law, and to the end, that their Authority should not be known,

said, but also for that actions real and personal were not to be heard and determined by Commission, but according to the Laws of the Realm. Vid. 2 Eliz. Dier 175.

Anno 31 H. 8. 6.  
parte Roberto  
Landaven's Episcopo  
Præsidentis  
Concilii, &c.  
& aliis fact.

*a* First, It was resolved by all the Judges of the Court of Common Pleas, Trin. 6 Jac. that this clause is against Law, as the like had been formerly often resolved. See before Cap. of the Court of Requests.

*b* 2. It was then also clearly resolved, that this latter clause was against Law, not only for the cause afore-

It

they



they procured the first institution to be ex diametro altered, viz. that their Commission should not give them any express authority at all, but wholly did refer their authority to certain instructions which they kept themselves in private, and were not enrolled in any Court, whereunto the subject might have resort. Sed misera servitus est, ubi jus est vagum, aut incognitum. And thereupon King James being informed hereof by the Judges of the Common Pleas (who had granted prohibitions to the President and Council) gave order that their instructions should be enrolled, to the end that the subject might take advice of learned Council what course he might take to enjoy the benefit of the Laws of the Realm, his best birthright.

This is left out of the print in latter time, but it is in the Parliament Roll, &c.

And it appeareth in the Subsidy in Anno 32 H.8. cap.50. that H.8. raised not only this President and Council, but a President and Council also having like authority in the Western parts, pretending it to be for their ease to receive Justice at their own doors, but they of Cornwall, Devon, &c. desirous to live under the immediate government of the King, and the Common Law opposed it, Et sic Commissio illa cito evanuit: which Commission under the Great Seal we have seen. See in the Statute of 13 El. where the President and Council of York is mentioned, and no man doubteth, but that there is a President and Council de facto, but what Jurisdiction they have is the question.

13 El. cap. 13.  
See in the Chapter of the Court of Request, answer made to this objection in like case

Thus much (having taken upon us to write) we have clearly and plainly delivered our opinion, and he that searcheth the secret of hearts, knoweth that we have published nothing herein or in any other of our works, reluctante conscientia.

And in respect of some continuance it hath had, and many decrees made, it were worthy of the Wisdom of a Parliament for some establishment to be had therein.

## CAP. L.

*The Courts and their Jurisdictions within the City of London; And first of**The Court of the Hustings.*

**F**Or the Antiquity and name of this noble City, you may read in Lambard Inter leges Edovardi Regis, fo. 136. b. Sed utere tuo judicio, nihil enim impedio. \* But Ammianus Marcellinus an approved Author above 1200 years since, calleth it Vetustum oppidum. And Cornelius Tacitus, (who married the daughter of Lucius Agricola the Roman, and was here with him by the space of seven years) affirmeth Quod Londinum tempore Neronis (which is above 1500 years past) fuit copia negotiatorum & comœatu maxime celebre. To be short, it is Camera regis, Reipublicæ cor, & totius regni Epitome.

Lib. 8. fo. 130. in the case of the City of London.  
\* For the Antiquity; For the Antiquity and Name.

And in searching among such Records as we had observed, of or concerning this noble City, we have observed a Charter in the Saxon tongue made by William the Conqueror in these words; William Cýng gæte william Birceop 7 Godsperege poþtegepan 7 ealle þa Bupþapen þe on Lunden beon, &c. i. William the King greeteth William the Bishop and Godfrey the Prior, and all the Burgesses that in London be, &c.

This is the highest Court and of the greatest celebrity within London. It is holden before the Mayor and Sheriffs, of all pleas, real, mixt, and personal. Nota, the rule of the Register is, Quodlibet breve, quod tangit liberum tenementum in London, dirigitur Majori five Custodi & Vicecomitibus; & alia brevia tantum Vicecomitibus.

Regist. 2. b.  
F. N. B. 6. f.

This word Hustings is derived of two Saxon words, viz. Hus which signifieth a house, or bench, and things, that is, causes, or pleas, as much to say, as the Bench, or Court of pleas, for Bancus or Bench is taken for a Court, as the Kings Bench, the Common Bench, &c.

Fleta lib. 2. in his Chapter De differentiis Curiarum. Habet Rex Curiam suam, &c. Et in Civitatibus & Burgis & in Hustingis London, Lincoln, Winton & Eborum & alibi in libertatibus, &c. Et cap. 48. Habet Rex curiam suam in Civitatibus, Burgis & locis exemptis, a sicut in Hustingis London, Winton, Lincoln, Eborum, & apud Shepey, ubi Barones & Cives recordum habent, &c. So as neither the name nor the Court is appropriated to London.

Fleta lib. 2. ca. b.  
& 28.  
a F. N. B. 61. 9.  
juris utrum.  
62. b. partition. &  
199. ex gravi querela. b.

b For Writs of Error to be brought of any Judgment in the Hustings; See the Register and F. N. B.

b Regist. 130. 137.  
F. N. B. 23. c.

c Concerning forrain Vouchers, and forrain pleas, see F. N. B. fo. 6. E. & Stat. de Glouc' cap. 12.

c F. N. B. 6. c.  
Glouc. cap. 12.  
2 part Institutes.  
33 E. 3. jurisd. 60.  
36 H. 6. 33.

Of Lands holden, no Writ doth lye but in London according to the custom, Dier 15 El. 317. Judgment of the outlawsies in the Hustings is not given by the Mayor, who is Coroner or his Deputy, but by the Recorder by the custom of this City.

2, 3. ¶ *The two Courts of the Sheriffs.*

In Curia Civitatis prædictæ coram Vicecom' sine brevi nostro secundum consuetudinem ejusdem Civitatis. If an erroneous Judgment be given before the

Regist. ubi sup.  
F. N. B. 23. a.

It k 2

Sheriffs,



Sheriffs, the party grieved shall sue a Writ of Error, and remove this before the Mayor and Sheriffs in the Hustings.

Stephanides cap.  
de dispositione  
urbis.

For the Antiquity of the Sheriffs and their Courts, Fitz Stephen who wrote of the government of London in the Reign of King Stephen, of this City saith;

Hæc Civitas Urbe Roma, secundum Chronicorum fidem, satis antiquior est, &c. Unde & adhuc antiquis eisdem utuntur legibus communibus institutis; hæc similiter illi regionibus est distincta, habent annuos pro Consulibus Vicecomites, habet Senatoriam dignitatem, & Magistratus minores, &c. ad genera causarum, deliberative, demonstrative, judicialis loca sua fora singula, habet sua diebus Statutis Comitia, &c.

Nota.

In Lib. Abbat. de  
Ramsey.  
\* Tempore H. I.

In the book of the Abby of Ramsey to a conveyance or concord \* without date, made in the Court of the Hustings of London of a certain house in Walbroc within the City, between Wilnothus de Walbroc, and Renaldum Abbatem de Ramsey, the Witnesses were (amongst others) Willielmus de Einsford Vicecomes de London, & Johannes Subvicecomes ejus, & Gervasius Clericus ejus. More might be said hereof, but it is clear, that so long as this City hath been a County of it self, so long there have been Sheriffs, for it cannot be a County without Sheriffs. There are within the walls of this City 97 Parishes, and out of the walls 16 Parishes; standing partly within the Liberties of the City, and part without in Midd. and Surry.

#### 4. ¶ *The Court of Equity before the Lord Mayor, commonly called, The Court of Conscience.*

I H. 6. 14. Lib. 8.  
fo. 126.  
Lib. Int. Rast.  
Custom 21. &  
Viller.

The Custom of London is, and hath been time out of mind, that when a man is impleaded before the Sheriffs, the Mayor upon the suggestion of the Defendant may send for the parties and for the Record, and examine the parties upon their pleas, and if it be found upon his examination that the Plaintiff is satisfied, that he may award that the Plaintiff shall be barred: and this was holden by the Court to be a good Custom, but by no Custom he can examine after judgment. Note, a Court of Equity may be had by prescription, but cannot be raised by grant, as hath been said in the Chapter of the Chancery, and of the County Palatine of Chester.

#### 5. ¶ *The Court of the Mayor and Aldermen.*

See 43 E. 1. c. 12.  
In fine.

Lib. 4. fol. 64, 65.  
Fulwoods case.  
The Print is 28 E.  
3. cap. 10. but it  
should be 27 E. 3.  
ca. 10. And so re-  
solved by Parlia-  
ment, in 1 H. 4.  
ca. 15. Altered in  
the penalty. 17 R.  
2. Rot. Par. nu. 26.  
explained.  
Parliament not to  
extend to error in  
judgment.

This is a Court of Record, and consisteth of the Lord Mayor, the Recorder, and 23 Aldermen, whereof the two Sheriffs being Aldermen are part.

It is ordained and established that the Mayor, Sheriffs and Aldermen, which have the governance of the City, shall redress and correct the errors, defaults and misprisions which be used in the City of London, for default of good governance of the Mayor, Sheriffs and Aldermen, &c. This is declaratory of their former power of governance, and for this cause principally amongst others, this Court was instituted.

In this Court are many Courts, as namely,

#### 6. ¶ *The Court of Orphans.*

The Mayor and Aldermen by Custom have the custody of Orphans within the City. And if they commit the custody of the Orphans to another man, he shall have a ravishment of Ward, if the Orphan be taken away.

It is enacted, that the Mayor and Chamberlain of London for the time being, shall

F. N. B. 142. g.  
32 E. 3. gard. 31.  
1 R. 2. ibid. 166.  
Lib. 4. 64, 65.  
Rot. Par. 1 R. 2.  
nu. 130.



shall have the keeping of all the lands and goods of such Orphans as happen within the City, saving to the King and other Lords their rights of such as hold of them out of the same liberty.

A Recognizance may be acknowledged in this Court before the Mayor and Aldermen to the Chamberlain for Orphans. Lib. 4. fol. 64, 65. Fulwoods case.

The Chamberlain is a sole corporation to him and his successors for Orphans: and a recognizance or bond made to him and his successors concerning Orphans shall by custom go to his successor. Lib. 4. ubi sup.

The government of Orphans belong to the Mayor and Aldermen, and they have jurisdiction of them, and therefore if any Orphan sue in the Ecclesiastical Court, or elsewhere for a legacy, or duty due to them by the Custom, a Prohibition doth lye. See the First part of the Institutes, Sect. 267. how the goods of a Freeman of London shall be divided.

For the Liberties of London, see 50 E. 3. fol. 143.

An Act was made in 7 H. 4. c. 9. much prejudicial to the liberties of this City, which is in print, and it was repealed in 9 H. 4. n. 30. which is not printed. 7 H. 4. cap. 9. Rot. Par. 9 H. 4. nu. 30.

It would ask a Treatise by it self to handle at large the other authorities and powers of the Mayor and Aldermen in the Court of Aldermen, and of the other Courts within this City, which we will run over as briefly as we can. And the rather, for that in my Books of Reports I have published many cases concerning the Courts, Customs, Liberties, Franchises, and Privileges of this City, and also in the First part of the Institutes, and in this and other parts thereof.

Lib. 2. fol. 57.  
Lib. 4. fol. 18, 54.  
64, 65. & 113.  
Lib. 5. fol. 63, 64.  
73. 83. 107.  
Lib. 8. fol. 122.

125. 126. 127. Vide 129. Lib. 11. fol. 53. & 194. James Bagges his case. See the first part of the Institutes, fol. 176. b. Sect. 267. See the second part of the Institutes, Mag. Carr. cap. 9.

### 7. *The Court of Common Council.*

This Court hath some resemblance of the high Court of Parliament, for it consisteth of two houses, viz. the one of the Mayor and Aldermen, and the other of such as be of the Common assembly resembling the whole Commynalty of London. In this Court they may make constitutions and Laws for advancement of Trade and Traffick: for the better execution of the Laws and Statutes of the Realm, or pro bono publico, and for the good government of the City. So as these Constitutions and Laws be not contrary to the Laws and Statutes of the Realm. And this being made by the Mayor, Aldermen, and Commynalty, do bind within this City and the Liberties thereof. They of the Common assembly do give their assent by holding up their hands.

Lib. 5. fol. 62, 63.  
the Chamberlains  
case. Lib. 8. f. 123.  
125. Le case del  
City de Londres.

### 8. *The Court of the Ward-mote.*

Ward-mote is derived from Ward and Mote, that is, the Ward Court. In London the Parishes are as Towns, and the Wards are as Hundreds, and therefore Riens diens Gard was a good challenge at the Common Law. 7 H. 6. 36, 38. 7 H. 7. 4.

In this City there are 26 Wards divided for the government of them amongst the 24 Aldermen of the City. This Wardmote inquest, consisting of 12 or more of every Ward, shall inquire of such persons as have not paved or amended their parts and portions of the Streets and Lanes within the said City, &c. 32 H. 8. cap. 17.

### 9. *The Court of Hall-mote.*

This is derived of Hall and Mote, as much as to say the Hall Court, i. Conventus Civium in Aulam publicam, every Company of London having an Hall wherein they keep their Courts, and this Court anciently called Hall-mote or Folke-mote.



10. ¶ *The Court of the Chamberlain for Apprentices.*

Lib. 8. fol. 129. The  
case of the City of  
London.

This Court concerning the making free of Apprentices. One may be free of London three manner of ways, viz. by Service, as here in Case of Apprentices: 2. By Birthright, the son of a Freeman: and 3. By Redemption, by order of the Court of Aldermen.

2 Rot. Par. 7 R. 2.  
nu. 37.  
Vid. inf. 252, 253.  
\* Nota hoc. 8 H. 7.  
4. b Dier 22 El.  
373. 7 H. 6. f.  
21 H. 7. 16, 17.  
Pl. Com. 36. b.  
38. 47. 59.  
Lib. 8. fol. 129.

Now to treat of the great and notable Franchises, Liberties, and Customs of the City of London, would require a whole Volume of it self. But there is a most beneficial Statute made for the strengthening and preservation of the same, which I know no other Corporation hath. It is enacted that the Citizens of London shall enjoy all their whole liberties whatsoever with this Clause, *Licet usi non fuerunt vel abusi fuerunt*, and notwithstanding any Statute to the contrary, &c. *Lege statutum*, for by this Act the City may claim liberties by Prescription, Charter, or Parliament, notwithstanding any Statute made before 7 R. 2. And this is the Statute mentioned in our Books.

11. ¶ *The Court of the conservation of the Water and River of Thames, &c.*

4 H. 7. cap. 15.

Rot. Parl. 2 H. 5.  
nu. 15.

Rot. Parl. 2 H. 5.  
nu. 16.

3 Jac. cap. 14.

The Mayor of London for the time being hath the conservation and rule of Water and River of the Thames, and the issues, breaches, and lands overflown, &c. from the Bridges of Stanes unto the water of Yendall and Medwey, and authority as touching punition for using unlawful Nets, and other unlawful Engines in fishing, and to all correction and punishment there concerning unlawful Nets and Engines there. In all Commissions touching the water of Ley, the Mayor of London shall be one. See hereafter Cap. Commission of Sewers the Statute of 3 Jac. c. 14. that Sewers that fall into the Thames shall be subject to the Commission of Sewers.

12. ¶ *The Court of the Coroner in London.*

The Mayor is Coroner within the City of London, and the Court of the Coroner is holden before him or his Deputy. Vide postea in the Chapter of the Coroner.

13. ¶ *The Court of the Escheator in London.*

The Lord Mayor is also Escheator within the City, and this Court is holden before him or his Deputy. See before in the Chapter of Escheator.

14. ¶ *The Court of Policies and of Assurances in London.*

43 Eliz. cap. 12.

This Court sitteth by force of the Commission under the Great Seal warranted by Act of Parliament, An. 43 El. c. 12. there being an Officer or Clerk to register assurances, the jurisdiction of which Court you may read in that Act of Parliament made to encourage Merchants to trade and traffick, the benefit whereof appeareth there, and is too long to be recited, and the rather for that we can add nothing to that Act of Parliament.

15. ¶ *The Court of the Tower of London.*

This Court is holden within the Virge of London before the Steward there by prescription of debt, trespass, and other Actions of any sum greater or lesser, whereof you may read in 4 E. 4. fol. 36. a. b.

4 E. 4. 36. a. b.

Note, where it is said, that the Tower of London is within the City of London, it is thus to be understood, that the ancient Wall of London (the mention whereof yet appeareth) extendeth through the Tower, and all that which is inclosed with the said wall, viz. on the West part thereof, is within the City of London, that is to say, in the Parish of All-Saints-Barking within the Ward of the Tower of London. And the residue of the Tower of London, on the East part of that ancient wall is within the County of Middlesex. And this upon view and examination was found out, Mic. 13 Jac. Regis, in the case of Sir Thomas Overbury, who was poisoned in a Chamber in the Tower on the west part of that old wall. And therefore Weston the principal murderer was tried before Commissioners of Oier and Terminer in London, and so was Sir Gervase Elvice Lieutenant of the Tower, as accessary.

16. ¶ *Of the Jurisdiction and authority of the President, Censors, and Comminalty of the Colledge of Physicians scituate in Knight-Rider-street in the Ward of Cattle Barnard within the City of London and seven miles compass.*

Of this Colledge, and of their jurisdiction and authority, sufficient hath been said in the 8 Book of Reports in Doctor Bonhams case, whereunto we refer the studious Reader. Hereunto we will add for the safety of Physicians, especially of the Kings Physicians; a Record worthy of observation.

Lib 8. fol. 107. & c.  
Dr. Bonhams case.  
See the Statutes of  
3 H. 8. c. 6. & 11.  
14 H. 8. c. 5. 1 Mar.  
c. 9. 32 H. 8. c. 40.  
42. 34 H. 8. cap. 8.  
\* Rot. Pat. 32 H. 6.  
m. 17. by what  
Warrant Physick  
is to be given to  
the King.

\* Rex adversa valetudine laborans de assensu concilii sui assignavit Johannem Arundel, Johannem Saceby, & W. Hatcliffe Medicos: Robertum Warren & Johannem Marshall Chirurgos ad libere ministrandum & exequendum in & circa personam suam; Imprimis, viz. quod licite valeant moderare sibi dietam suam & quod possint ministrare Potiones, Syrupos, Confectiones, Laxativas medicinas, Clysteria, Suppositoria, Caput purgea, Gargarismata Lealnen, epithimota, fomentationes, embrocationes, capitis rasuram, unctiones, emplastra, cerera ventos. cum sacificatione vel sine, emorodorum provocationes, &c. Dantes singulis in mandatis quod in executione præmissorum sint intendentes, &c.

Upon this, Four things are to be observed. 1. That no Physick ought to be given to the King without good warrant. 2. That this Warrant ought to be made by the advice of his Council. 3. They ought to minister no other Physick then that which is set down in writing. 4. That they may use the aid of those Chirurgions named in the Warrant, but of no Apothecary; but to prepare and do all things themselves, &c. And the reason of all this is the precious regard had of the health and safety of the King, which is the head of the Commonwealth. \* The Science of Physick containeth the knowledge of Chyrurgery.

\* 32 H. 8. cap. 40.  
3 E. 3. coron. 163.

If one that is of the mystery of a Physician take a man in cure and giveth him such physick as within three days he dye thereof, without any felonious intent, and against his will, it is no Homicide.

But Britton saith, that if one that is not of the mystery of a Physician or Chyrurgion, take upon him the cure of a man and he die of the Potion or Medicine, that is (saith he) covert felony.

Britton cap. 5.  
De homicides.

Physicians and Chyrurgions soient Sages en leur faculties, eyent sanes les consciences, cy que rien ne ent failli a faire cure, silz ne scavoient a bone chete mitter, ou silz a bone chete scavoient & sentre meritent nequidant follement ou negligentment

Mirror cap. 4. §.  
De homicide.  
Verb. [dant part.]



negligentment issint que ilz mittont froide pur chaude ou le revers, ou trope peu de cure, ou nemi mitter un due diligence, & nosmement in arsons & abscissions que sont defend' a fare forsq; al peril des mesters si lour patients moreront ou perdent memorie, in tiels cafes sont ils homicides ou mayhemeres.

And thus much concerning Physicians.

For Courts holden in other Cities, Towns Corporate, and Burghs, our purpose is not, to treat of them, because they are private and sufficiently known; but let us say somewhat of the liberties, franchises, and immunities of this noble City.

Parl. 17 R. 2. n. 26.

It is enacted, that the Statute of 28 E. 3. c. 10. shall not extend to any erroneous judgment given or to be given in the City of London.

See after, c. 54. the ancient office of garbling of spices, &c.

Regist. 267. b.

There is a writ in the Register necessary to be put in execution for the whole somnells of air in London, and in all other Cities, &c. De vicis & venellis mutandis.

\* See the third part of the Instit. Cap. Burglary or Burglary.

Lourgulary or Lourgary is an offence when any cast any corrupt thing appoysoning the water in or about London, compounded of these two words Lour corruption, and Laron a Thief or Felon, as \* Burglary: and if any dye by reason of any such offence within a year after, it is felony, and extendeth to all other Cities, Burghs, &c.

It was petitioned to the King, that no man in Cities, Towns, or elsewhere do carry Plates of Silver, but only the Kings Serjeants at Arms, but that they carry Plates of Copper and of no other metal. Whereunto the King answered, [The same shall be so, except the Serjeants of the City of London, who may carry their Plates of Silver within the liberties of London before the Mayor in the presence of the King.]

V. Cartam H. 1. De liber. London.

Omnes homines London sint quieti & liberi, & omnes res eorum per totam Angliam, & per portus maris de theolonio & passagio, & ab omnibus aliis consuetudinibus.

11 H. 3. 18 Febr. special and rare Liberties granted to the City of London.

In the Charter of H. 3. bearing Teste 18 Feb. An. Regni sui 11. the King granted to the City of London Vicecomitatū London & Midd. &c. And in that Charter this special franchise and privilege is granted to the Sheriffs of London and Middlesex for the time being in these words. Ita scilicet quod si illi qui pro tempore fuerint Vicecomites constituti aliquod delictum fecerint, unde misericordiā pecuniā debeant incurrere, non judicentur ad plus nisi ad misericordiā vigint' libr', & hoc sine damno aliorum civium si vicecomit' non sufficiant' ad misericordiarum suarum solutionem. Si vero aliquod delictum fecerint, per quod periculum vitæ vel membrorum incurrere debeant, judicentur sicut judicari debent per legem civitatis: De hiis autem quæ ad prædictum vicecomitatum pertinent respondeant vicecomites ad Scaccarium nostrum coram Justiciariis nostris. Salvis eisdem vicecomitibus libertatibus quas alii cives London habent.

Anno 11 H. 3. 16 Martii. Duellum.

In the Charter of the same King bearing date 16 Martii An. Regni sui undecimo supradicto, the King granted to the City of London, Quod nullus civis civitatis prædictæ faciat duellum, & quod de placitis ad coronam pertinent' se possint disrationare secundum antiquam consuetudinem civitatis, & quod infra muros civitatis, neque in portefokne nemo capiat hospitium per vim vel per liberationem Marechal', &c. & si quis in aliqua terrarum nostrarum citra mare, vel ultra, five in portubus maris citra mare, vel ultra, theolonium vel aliquam aliam consuetudinem ab hominibus London ceperit postquam ipse à recto defecerit, Vic' London namium inde apud London capiant.

Hospitium. Per liberationem Marechalli.

Anno 11 H. 3. 18 Augusti.

In another Charter of the same King bearing date 18 Augusti Anno 11 supradict' the King did disafforest and diswarren the Forest and Warren of Stanes in the County of Middlesex.

Anno 52 H. 3. 26 Martii. De placitis ad coronam.

And by another Charter of the same King bearing date 26 Martii An. Regni sui 52, the King granted to the Citizens of London in these words, Concessimus eisdem civibus quod de placitis ad coronam pertinent', & hiis maxime, quæ infra civitatem prædictam & ejus suburbium fieri contingent, se possint disrationare secundum

secundum antiquam consuetudinem civitatis prædictæ, eo tamen excepto, quod super  
tumulos mortuorum de eo quod dictum essent mortui si viverent non liceat præcise  
jurare sc. loco mortuorum qui ante obitum suum electi fuerint ad eos distracionandos  
qui de rebus ad coronam spectantibus appellati fuerint, vel restati alii liberi & lega-  
les elegantur qui idem sine dilatione faciant quod per defunctos memoratos, si veni-  
rent fieri opereretur, Et quod tam forinseci quam alii attornatos facere possint in Hu-  
stingo London tam agendo quam defendendo in curia nostra.

Super tumulos.

Attornati in  
Hustingo.

The Citizens of Burgesles of London were before and after the Conquest  
governed by Portgraves or Portgreves until the Reign of R.1. by whose Charter  
they were governed by two Bailiffs: and yet King Richard in the first year of  
his Reign appointed them a Mayor, who continued therein until the Eighth  
year of King John, and then King John appointed a Mayor. And forasmuch as  
sometimes the Mayor appointed by the King was no Citizen of London, King  
John in the Tenth year of his Reign granted to the Citizens liberty and autho-  
rity to choose de seipsis a Mayor, &c. And so it continueth unto this day.

An. 10. Johannis.

The Aldermen of London were changed by election every year until 28 E. 3.  
Then it was ordered they should not be removed without some special cause.  
But Rot. Parl. 17 R. 2. nu. 25. it is enacted, that the Aldermen of London shall  
not from henceforth be yearly chosen, but remain till they be put out for rea-  
sonable cause, notwithstanding the Ordinances of E. 2. and E. 3. and so it still  
continueth.

Mayor de se ipsis  
Aldermen.

Rot. Parl. 17 R. 2.  
nu. 25. enacted.

Rot. Pat. Anno 1 E. 3. the King granted that the Citizens of London should  
not be constrained to go out of the City of London to any War: and the liber-  
ties of this City shall not for any cause be taken into the Kings hands. Rot.  
Parl. 1 E. 3. Autoritate Parliamenti.

War.  
Liberties not to be  
taken into the  
Kings hands.

See hereafter Cap. of Forrelts, pag. Cart H. 1. for their recreation by  
hunting, &c.

Albeit by the Statute of Magna Carta, and other Acts of Parliament, the li-  
berties, privileges and franchises of the City of London be confirmed: yet the  
most beneficial of them all is that of \* 7 R. 2. before mentioned; whereby it is  
enacted, that the Citizens of London shall enjoy the same, with this clause,  
Licet usi non fuerint vel abusi fuerint, and notwithstanding any Statute to the  
contrary.

Mag. Cart. cap. 9.  
Rot. Pat. 11 H. 3.  
Rot. Parl. 5 R. 2.  
nu. 19.  
50 E. 3. nu. 143.  
\* Rot. Par. 7 R. 2.  
nu. 37.

These notable, rare, and special liberties and privileges we have attempted  
to remember: but whether herein we have done that good to the City that we  
intended, we know not, for we have omitted many more of no small number of  
great rarity and consequence, too long here to be recited.

Vid. sup. pag. 250.  
a Nota hoc.

See before pag. 125. Breve de listis & barris pro duello fac. Vid. Rot. Cart. 18 Fe-  
bruarii 11 H. 3. against the erection of the Lieutenant of the Tower of Kidelles,  
&c. 2 part of the Institutes Mag. Cart. cap. 23.



## The Court of the Justices assigned for the Government of the Jews.

### *Justiciarii ad custodiam Judæorum assignati.*

Inter leges Edwardi, Lamb.  
Cap. 29. fo. 133. b.

**O**Mnes Judæi ubicunq; in regno sunt, sub tutela & defensione Regis ligea debent esse, nec quilibet eorum alicui diviti se potest subdere sine Regis licentia: Judæi enim & omnia sua regis sunt. Quod si quispiam detinuerit eos, vel pecuniam eorum, perquirat Rex, si vult, tanquam suum proprium.

Rot. Pat. 41 H. 3.  
m. 4. nu. 6.

These Justices did hold a Court concerning the custody and government of the Jews, as (amongst many other Records) it appeareth, Rot. Pat. An. 41 H. 3. m. 4. nu. 6. And that then Philip Basset, Philip Luvell, Henry de Bathon, and Simon Passel, &c. were then Justices ad Custodiam Judæorum assignat. But when the Jews were utterly (as hath been said) banished, this Court ceased, which was in 18 E. 1. Anno Domini 1293. See the Second part of the Institutes Stat. de Judaismo. Rot. Claus. 18 E. 1. Memb. 6. See Tho. Walf. in Hypodigmatæ Neustriæ 18 E. 1.

## The Courts of Staincliffe and Frendles Wapentakes.

3 H. 5. cap. 2.  
9 H. 6. cap. 10.

**B**Ecause I find mention made in Acts of Parliament of the Courts of Staincliffe and Frendles Wapentakes, &c. I thought good to refer you to those Acts.

## CAP. LI.

*Of the City of Westminster.*

**I**T hath his name of the Monastery, which Minster signifieth, and it is called Westminster in respect of the Eastminster not far from the Tower of London.

This Westminster Sebert the first King of the East Saxons that was Christianized, founded; and he founded also the University of Cambridge, as works and witnesses of his Christianity. Sebert began his Reign Anno Domini 603.

But leaving these, and others of like nature, to others, not lying properly in my way; let us turn our eye to such particular jurisdiction as within this City is exercised. For the better understanding whereof, it is to be known that within this City there are Twelve several Wards, out of which there are elected one Burgeſſes and one Assistant in every several Ward; and out of these twelve, two are elected yearly in the Thursday in the Easter week for Chief Burgeſſes to continue for one whole year following. To these Burgeſſes authority is given by Act of Parliament in the 27 year of the Reign of Queen Eliz. (not printed) to hear, examine, determine, and punish according to the Laws of the Realm and lawful customs of the City of London, matters of incontinency, common scolds, Tumults, and common annoyances, and likewise to commit such persons as shall offend against the peace, and thereof to give knowledge within 24 hours to some Justice of Peace within the County of Midd. This Act was at the first but a probationer, but is continued to this day.

One thing concerning this ancient Monastery is observable, that after the High Court of Parliament was divided into two several houses (whereof we have said somewhat in the Chapter of the High Court of Parliament) the accustomed place of that thrice worthy Assembly of the Knights, Citizens, and Burgeſſes of Parliament (when the Parliament was holden in Westminster) was in the Chapter house of the Abbot of Westminster, there to debate and consult De arduis & urgentibus negotiis regni, & Statutum regni & Ecclesiæ Anglicanæ concernentibus, &c. And this continued until the Statute of 1 E. 6. c. 14. which gave to the King Colleges, free Chappels, Chaunteries, and whereby the King enjoyed the ancient and beautiful free Chappel of S. Stephens, founded by King Stephen, (which had Lands and Revenues of the old yearly value, of 1085 l. 10 s. 5 d.) Since which time the Chappel thereof hath served for the House of Commons when Parliaments have been holden at Westminster. See before in the Chapter of the High Court of Parliament. Rot. Parl. Anno 50 E. 3. nu. 8.

Radulphus de Ingham Chief Justice of England, (a very poor man being fined before him at 13 s. 4 d.) in another Term, moved with pity, caused the Record to be raised and made 6 s. 8 d. for which he (for his fine) made the Clock (to be heard into Westminster Hall) and the Clockhouse in Westminster, which cost him 800 marks, and continueth unto this day, which sum was entered into the Roll. And almost in the like case in the Reign of Queen Elizabeth, Sir Robert Catlyn Chief Justice of England would have had Justice Southcote (one of his companions Justice of the Kings Bench) to have altered a Record, which the Justice denied to do, and said openly in Court, that he meant not to build a Clockhouse. Tempore E. 1. Vid. 2 R. 3. f. 10. d.

This Monastery in Anno 30 H. 8. was surrendered to the King, who erected thereof a Dean and Chapter. Anno 33 H. 8. it was raised to a Bishoprick, and Thomas Thurlby made thereof the first and last Bishop, &c. Queen Eliz. made it a Colledge consisting of a Dean, twelve Prebends, a Scholmaster, an Alther, 40 Schollars, and 12 Almshouses, and so it was named the Collegiate Church of Westminster.

In Anno 37 H. 8. the Kings Mannor of Westminster was made an Honor. 37 H. 8. cap. 18.



## CAP. LII.

*Of the City of Norwich, &c.*

In the book of  
Domesday made  
by William the  
Conqueror.

**W**ithin this City there was in the Reign of King Edward the Confessor 1300 Citizens, and then this City paid to the King 20 l. and to the Earl 10 l. And besides these 20 s. and Four Prebendaries and Six Sextaries of honey, a Bear, and six Dogs to bait him. Now it yieldeth 70 l. to the King, and a 100 s. to the Queen, and a Palfrey, and twenty pound of white rent to the Earl, &c.

The foundation of the Incorporation of this City is very ancient, for in ancient Manuscripts it appeareth, that In tempore Steph. Regis de nova fundata & ut Villa populata communitas facta.

Camden in Bri-  
tannia.

\* Urbanitas ab  
urbe.

\* Alex. Nevill.

a This Monastery  
was founded by  
King Knute, and  
increased by Edw.  
the Confessor and  
the Monastery  
made of that  
strength as it see-  
med to be *potius*  
*castrum quam clau-*  
*strum*. It was of  
the order of S.  
Benedict of black  
Monks.

b Stat. de 27 H. 8.  
concerning the Bi-  
shoprick of Nor-  
wich.

c The like is not  
in England.

See before in the  
Chapt. of the Roy-  
al Franchise of Ely,  
that King H. 1. of  
the Monastery of  
Ely made a Bishop-  
rick, but King H. 1.  
had therein one  
end, and King H. 8.  
another.

This City is highly commended for many things, for it is truly said of it, Quod suis opibus, frequentia, ædificiorum elegantia, Templorum pulchritudine & numero, (Parœcias enim plus minus 30. complectitur) Civium sedulitate, in principem fide, in \* exteros humanitate, inter celeberrimas Britannicæ urbes merito connumeranda, &c. Mœnibus validis (in quibus crebræ dispositæ turres, & undecim Portæ) undique obseptæ, nisi ad Ortum qua flumen (cum sinuoso flexu 4. Pontibus pervium Septentrionalem urbis partem interluerit) profundo alveo & præcipitibus ripis defendit. \* It is preferred before all the Cities in England, except London. It hath above 30 Parishes, and is as large within the Walls as London. It had within it and the Liberties Six Religious houses, and one Hospital.

For the better establishing of the Ecclesiastical Jurisdiction belonging to the Bishop of Norwich (of which Jurisdiction in general we are to treat hereafter) it shall not be impertinent to set down the true state of this Bishoprick.

In Anno 27 H. 8. and before William Rugge Doctor of Divinity of the University of Cambridge was Abbot of the a Monastery of S. Bennets de Hulme in the County of Norf. and the Bishoprick of Norwich becoming void by the death of Richard Nick commonly called the blind Bishop, the King nominated the said Abbot to the Bishop of Norwich. And afterwards the 4. of Febr. Anno 27 H. 8.

b It was (amongst other things) enacted by Authority of Parliament, That such person as should be elected and consecrated Bishop of the said See should have and enjoy to him and his successors Bishops of the said Bishoprick of *Norwich* united and knit to the said Bishoprick the Monastery of S. Bennets, and all and singular Mannors, Lands, Tenements, &c. belonging to the said Monastery, &c. And that the person which should be named Bishop of *Norwich*, and his Successors Bishops of the same Bishoprick from thenceforth should be Abbots of the Monastery of S. Bennets, and have the dignities of the said Abbacy united, incorporated, and knit to the See of the said Bishop, &c.

But peruse the Statute, and you shall find that Doctor Rugge had Beneficium viscatum, for the Bishoprick lost much more by that Act than it gained. And afterwards this Doctor was elected and consecrated Bishop of Norwich: And being Patron, in the right of his Bishoprick; of the Hospital of S. Giles in Norwich, he as Patron, and Nich. Shaxton Master of the said Hospital by their deed acknowledged and intolled, bearing date 6 Martii Anno 1 E. 6. did give and grant to King E. 6. his heirs and successors, the said Hospital and the possessions and hereditaments belonging to the same, and all other their possessions and hereditaments



hereditaments in the said County of Norf. Certain Concealors ( *Templorum helluones* ) by pretext and colour of the said general words passed the possessions and hereditaments of the said Monastery of S. Bennets de Hulmo in a book of concealments under certain obscure words) which appear in the Act of Parliament hereafter mentioned) by Letters Patents of concealment bearing date the 2 day of August, An. 27 El. and Will. Redmain Doctor of Divinity, and Bishop of Norwich caused one Hamond a friend of his to take an estate to him and his heirs of and from the said Concealors of all or the greatest part of the said Monastery: which I (being then her Majesties Attorny General) understanding, and utterly mistaking the proceeding herein, conferred with the said Bishop about the same, and in the end he was brought to agree, that an Act of Parliament should pass for the establishment of the said Bishoprick and of the possessions thereof, which Act (wherewith I was well acquainted) passed at the Parliament holden in An. 39 El. and is in print, which you may read at large, where

39 El. cap. 22.

in you shall observe the fraud and falshood of the Concealors. What attempts these Concealors ( graceless and wicked men ) made to the subversion of the Deanery and Chapter of the Cathedral Church of Norwich, you may read in the Third book of my Reports. 73. Sed (favente Deo & auspice Christo) isti helluones non prævaluerunt. Which I have the rather remembered both for the establishment of the said Bishoprick, as for the repose and quiet of very many Fermoys, Officers, and other persons claiming interests in the said possessions in my native Country.

Lib. 3. fo. 73. the case of the Dean and Chapter of Norwich.

And if any question shall hereafter be made either concerning any of the possessions of this Bishoprick, or any other, or of any Dean and Chapter, or of the Colledges in either of the Universities, &c. by any Concealor or other; their possessions are established by the Act of Parliament of 21 Jac. cap. 2. intituled, An Act for the general quiet of the subject against all pretence of concealment whatsoever.

21 Jac. cap. 2.

For the Court of Justice within this City ( which is our principal aim ) we have treated of the like before in the City of London. To this we will add an Act of Parliament concerning the jurisdiction of this City ( whereof we have not found the like that we remember in any other ) which in effect is as followeth.

It is enacted for the Citizens of *Normich*, that if their Customs and Usages, heretofore used, or hereafter to be used, be difficult or defective in part or in all, or that the same need any due amendment for any matter arising, whereof remedy was not aforetime had, that then the \* Bailiffs and 24 Citizens of the same City, so therefore yearly to be chosen, or the greater part of them, shall from henceforth have power to ordain and provide from time to time such remedies which are most agreeable to faith and reason, and for the most profit, the good and peaceable government of the same Town, and of strangers thereto repairing, as to them shall seem best, so as such Ordinances be profitable for the King and his people.

Par. 2 R. 2. nu. 39. not in print. \* It hath now a Mayor and 24 Aldermen. Vide Rot. Cart. Anno 4 H. 4.

It is a County of it self, and hath two Sheriffs and large liberties without the walls. See the Statute of 33 H. 6. c. 7. how many Attornies should be in this City. See before in the Chapter of the High Court of Parliament concerning new Draperies, &c. and Worsteads &c. made in this City. See Rot. Parl. 18 E. 1. fol. 5. concerning the ancient liberties of this City.

33 H. 6. cap. 7.

\* *Burgi & Civitates fundat & ædificat sunt ad tuitionem gentium, & populorum Regni, & idcirco observari debent cum omni libertate, integritate & ratione.*

\* Int. Leges Wil. Conq. Lam. 125. Int. Leges Ethelstani &amp; Canuti fo. 62. &amp; 106. Oppida instaurantur, &amp;c.

\* 14 H. 4. It is enacted, that the Merchants and Artificers of Worsteads in *Norf.* may sell their single Worsteads to any place or persons being of the Kings amity notwithstanding any Inhibition or Liberty to the contrary.

\* Par. 14 H. 4. nu. 47. not in print.

He



Rot. Par. 11 H. 4.  
nu. 48.  
Trin. 13 E. 1. in  
Banco Rot. 76.

He that desires the terms, true makings, and quantities of *Moorheads*:  
Let him read the Statute of 11 H. 4. Rot. Parl. nu. 48.

Trin. 13 E. 1. in Banco, Rot. 76. *Inspecimus Cart. H. 3. Civibus Norwic' de libertatibus concess'*.

The beautiful Cathedral or Mother Church of Norwich was begun to be built by Herbert Bishop of Norwich. Anno 9 Willielmi Rufi.

19 E. 3. jurisd. 22.  
26 H. 8. cap. 3.

The Bishops of this See had the first fruits of Ecclesiastical Livings within their Dioceses before the Statute of 26 H. 8. c. 3. which no Bishop, or Archbishop of this Realm had.

It hath also a famous River abounding with Fish, especially the Pearch.

The strong and noble Castle of Norwich called Blanchflower environed about with the City, but no part thereof but of the County of Norf. was not (as some suppose) built by Bigot Earl of Norf. which some upon view thereof have conjectured, for that the Arms of Earl Bigot are graven on the Walls thereof. For we find a Charter of King Stephen in these words. *Stephanus Rex Anglorum Archiepiscopis, Episcopis, Abbat, Justic', Comitibus, Baronibus, Vicecomitibus, Ministris, & omnibus fidelibus suis Angliæ, Salutem. Sciatis me dedisse in feodo & hæreditate \* Willielmo Comiti Warren filio meo Castellum Norwici cum toto Burgo, &c.*

\* This William married Isabel daughter and heir of William Earl Warren, and in her right was Earl Warren. Vid. Mat. Par. pag. 92.

And Rafe de Waet Earl of Norwich defended this Castle of Norwich against William the Conqueror, who was driven out of England, and travelled with his wife to Jerusalem.

But true it is that Earl Bigot being after owner thereof, did both repair and enlarge the same, and set his Arms upon the walls thereof. And so much for the Antiquity (a great Ornament of this City) of this Castle, which now for want of reparation is ready to fall.

To conclude, This famous and free City is justly to be commended for profession of true Religion, their Loyalty to their Prince in all times of tumult, the good government of themselves, and the exercise of works of Charity.

This is the chief City of my Native Country.

Nescio qua natale solum dulcedine cunctos  
Ducit, & immemores non finit esse sui.

## CAP. LIII.

*The Court of the Tourne.*

**W**E have spoken of this Court (being a Court of Record) in the Second part of the Institutes, Mag. Cart. c. 35. whereunto we will add a Charter of William the Conqueror, which we find enrolled 2 R. 2. h. 5. pro Decano & capitulo Ecclesiæ beatæ Mariæ de Lincoln.

2. part of the Inst. Mag. Cart. Ca. 35. 12 H. 7. 18. Fineux. Rot. Pat. 2 R. 2. h. 5.

Willielmus gratia Dei Rex Anglorum, Comitibus, Vicecomitibus, & omnibus Francigenis, & qui in Episcopatu \* Remigii Episcopi terras habent, Salutem. Sciatis vos omnes, & cæteri mei fideles qui in Anglia manent, quod Episcopales leges quæ non bene, nec secundum sanctorum Canonum præcepta usque ad mea tempora in Regno Anglorum fuerunt, communi Concilio & Concilio Archiepiscoporum meorum & cæterorum Episcoporum & Abbatum & omnium Principum Regni mei emendandas judicavi. Propterea mando, & regia autoritate præcipio, ut nullus Episcopus vel Archidiaconus de legibus Episcopalibus amplius in \* Hundretto Placita teneant, nec causam quæ ad regimen animarum pertinet ad iudicium secularium hominum adducant, sed quicumque secundum Episcopales leges de quacunque causa vel culpa interpellatus fuerit, ad locum quem ad hoc Episcopus elegerit, & nominaverit, veniat, ibique de causa sua respondeat, & non secundum \* Hundretum, sed secundum Canones & Episcopales leges rectum Deo & Episcopo suo faciat. Si vero aliquis per superbiam elatus ad Justitiam Episcopalem venire non voluerit, vocetur semel, & secundo, & tertio; quod si nec sic ad emendationem venerit, excommunicetur: & si opus fuerit, ad hoc vindicand<sup>9</sup>, fortitudo, & Justitia Regis vel Vicecomitis adhibeatur: Ille autem qui vocatus ad Justitiam Episcopi venire noluit, pro unaquaque vocatione legem Episcopalem emendabit: hoc etiam defendo, & mea autoritate interdico, ne ullus Vicecom<sup>9</sup> aut præpositus, aut minister Regis, nec aliquis laicus homo de legibus quæ ad Episcopum pertinent se intromittat: nec aliquis laicus homo alium hominem sine Justitia Episcopi ad iudicium adducat: Iudicium vero in nullo loco portetur nisi in Episcopali sede, aut in illo loco quem ad hoc Episcopus constituerit.

\* This Remigius was the first Bishop of Lincoln; the See being removed from Dorchester to Lincoln.

\* i. In Turrio.

\* This is not intended of the Hundred Court but that in those times the Sheriff did hold his Tourn per Hundreda. See Mag. Cart. cap. 35. and the Exposition thereupon.

For the confirmation of this Charter, see in the Register of the Bishop of London. Willielmus Dei gratia Rex Anglorum R. Bainardo, & S. de magna Villa, P. de Vabines, cæterisque meis fidelibus de Essex & de Hertfordshire, & de Middlesex, Salutem. Sciatis vos omnes, &c. Tenor istius Cartæ est in Anglico de verbo in verbum in eadem Carta. Consimilis Carta ut ante ex libro Cartarum Archiepiscopi Cantuar<sup>9</sup>. Against this Charter it is objected. First, The time of the enrolling thereof, viz. in 2 R. 2. being never heard of before. Secondly, Out of the red book, Inter leges H. 1. cap. 8. de generalibus Placitis Comitatum, i. as well of the Tourn, as of the County Court.

a Lib. rubeus in Custodia Remem. Regis compositus tempore H. 1. c. 8. Read the whole Chapter. Vide ib. Cap. 12.

a Sicut antiqua fuerit institutione firmatum, salutari Regis imperio, vera nuper est b recordatione firmatum, generalia Comitatum Placita certis locis & vicibus & definito tempore per singulas Angliæ provincias convenire debere, nec ullis ultra fatigationibus agitari, nisi propria Regis necessitas, vel commune Regni commodum sæpius adjiciant. Interfint autem Episcopi, Comites, Vicedomini, Vicarii, Centenarii, Aldermanni, præfecti, præpositi, Barones, Vavassores, Tun-

b Int. Leges Edw. Lamb. 135. Vid. Stat. de Marlbr. cap. 10.

grevii



*a* Ecclesiastical causes.

*b* Pleas of the Crown in the Tourn.

*c* Private causes in the County Court.

*d* Turnum as it is here taken.

*e* And so is the Turn holden to this day. Mag. Cart. 35.

*f* And so is the County Court holden at this day. Mag. Cart. 35.

2 E. 6. 25.

*g* 22 E. 4. 22.

*h* 2. part of the Inst. Mag. Cart. cap. 17.

grevii & ceteri terrarum Domini diligenter intendentes ne malorum impunitas, aut Gravionum pravitas, vel iudicium subversio solita miseros laceratione continiant. Agantur itaque primo debita veræ *a* Christianitatis iura; Secundo *b* Regis placita; Postremo *c* causæ singulorum dignis satisfactionibus expleantur. *Whereupon they conclude, that Ecclesiastical causes were handled in the Tourn in the Reign of H. 1. long after the said supposed Charter. And certain it is that the Bishops Consistories were erected, and causes Ecclesiastical removed from the Tourn to the Consistory after the making of the said Red Book: Ideo penes Lectorem sit iudicium.*

In the same Chapter of the said Red Book it is further said, Et quoscunque *d* Shiresgemote discordantes inveniet, vel amore congreget, vel sequestret iudicio: debet enim Shiresgemot *e* bis, hundreda & wapentachia *f* duodecies in anno congregari.

The Tourn is a Court of Record holden before the Sheriff: the ancient Institution thereof was before Magna Carta *g* to hear and determine all felonies (death of man excepted) and common nuisance. *h* See the Statute of Magna Carta, cap. 17. and the Exposition upon the same in the Second part of the Institutes.

The stile of this Court is Curia visus Franc. Domini Regis apud B. Coram Vicecomite in Turno suo, &c. and not Turnum Vicecom' tent', &c. for Tornum est nisi perambulatio. The Articles inquirable in the Tourn are known, and need not to be here rehearsed.

## CAP. LIV.

*The Court of the Leet or view of Frank-pledge.*

**T**his is a Court of Record, and at the first derived and taken out of the Tourn, and is holden before the Steward, and he is Judge thereof. Of the Antiquity and Jurisdiction of this Court, you shall read in the Second part of the Institutes, Magna Carta cap. 35. And what the ancient Jurisdiction of the Leet was, you shall also read in the Second part of the Institutes, Magna Carta cap. 17.

Leet, Leeth, or Leet is a Saxon word, and cometh of the Verb gelapian or gelephan (g being added Euphoniae gratia) i. convenire, to assemble together, unde conventus.

If a common Pussant, &c. done within the jurisdiction of the Leet be not presented in the Leet, the Sheriff in his Tourn cannot enquire of it, for that which is within the precinct of the Leet is exempt from the Tourn, otherwise there might be a double charge; but in that case a Writ may be directed to the Sheriff to enquire thereof, &c. against the opinion of Fineux in 12 H. 7. if his opinion be not misreported. And by the book of 29 E. 3. This Writ is not taken away by the Statute of 28 E. 3. ca. 9. made the year before, which was then fresh in the Judges memory.

See the Second part of the Institutes, in the Exposition upon the Statute of 31 El. cap. 7. concerning Cottages and Inmates, special matter concerning the Jurisdiction of the Leet. See for the Jurisdiction of the Leet the Statute of 2 E. 6. cap. 10. concerning making of Wilt.

The Commons petitioned that excessive fines set on the Kings subjects by such as have Leets may be redressed, whereunto the King answered, The King would the same.

See a notable case concerning the Jurisdiction of the Leet and Court Baron, Mich. 18 E. 1. in Banco Rot. 156. Norf. Et ibi tenetur quod Clericus ad Letam venire non habet necesse, nisi ejus praesentia ex certis causis & considerationibus sit necessaria.

This Court of the Leet may enquire of corrupt Victual as a common nuisance, whereof some have doubted, both for that it is omitted in the Statute of the Leet, and of the weak authority of the book of 9 H. 6. where Martyn saith, That it is ordained that none should sell corrupt Victual. And Cottismore held opinion that it is Actio popularis, whereupon it is collected, that the consuance thereof belongs to the Leet. <sup>a</sup> And Martyn and Neal 11 H. 4. agreeing with him said truly, for by the <sup>b</sup> Statute of 51 H. 3. Stat. Pillor & Tumbrel, & Assis Panis & Cervis, and by the Statute made in the Reign of E. 1. intituled, Stat. de Pistoribus & Brafiatoribus & aliis Vitellariis, It is ordained that none shall sell corrupt Victuals. And by the <sup>c</sup> Statute of 14 E. 3. it appeareth that this Act was ordained in the time of his Grandfather, which was E. 1.

<sup>d</sup> Britton who wrote after the Statute of 51 H. 3. and following the same saith thus; Puis soit inquis de ceux queux achatent per un manner de mesure & vendent per meinder mesure faux, & ceux sont punies, come vendors des vines, & auxi ceux que ferront attaints de faux aunes, & faux poys, Et auxi les \* Macgrievous, & les gents que de usage vendent a trespassants mauvasse vians corumpus & wacrus, & autrement perillous a la sauntie de home. Et les Forrestallers, &c. Et fo. 33. he doth conclude the like passage with these words, Enconter le forme de nous Statutes.

See Mich. 7 E. 1. Rot. 9. Northampton. Abbas de Burgo. See the 2 part of the Inst. Mag. Cart. cap. 35.

Int' leges Edw. cap. 35.

29 E. 3. 21. Wilby. 12 H. 7. 18.

Rot. Par. 17 E. 3. nu. 38.

Mich. 18 E. 1. in Banco Rot. 156. Norf.

Stat. de visu Franc. 18 E. 2. 9 H. 6. 53. b.

<sup>a</sup> Vid. 11 E. 4. 6. b. per Neal & Brian. 1 R. 3. 1. a. 7 H. 4. 14. 15. Brook tit. Leet 1. <sup>b</sup> In the Statute at large p. 17. Mag. Cart. part 2. 23, 24. <sup>c</sup> 14 E. 3. cap. 12. <sup>d</sup> Britton f. 77. a.

\* Maccellarius, a Burcher or Victualler.



Fleta lib. 2. cap. 1.  
§. Est etiam.  
Et cap. 11. §. Item  
si dominus.

Est etiam atrox injuria quæ perpetuam inducit infamiam cum poena Pillorali & Tumbrelli, quæ quandoque fit per Pillitores, Brastiores, & alios qui falsis ponderibus utuntur & mensuris, quæ etiam fit per cibaria corrupta, & semicocta vendentes, &c. But none of these Statutes gave the consuance to survey and correct Victuallers for corrupt Victual to our Court of the Leet, therefore further Authority therein is desired. Wherein we will produce that which is omni exceptione majus, and that is by resolution in Parliament.

12 E. 4. ca. 8.

By the Statute of 12 E. 4. cap. 8. it is rehearsed, That Mayors, Bailiffs, and other like Governors of every City, Borough, and Town of substance within this Realm of England, for the most part have Courts of Leets and Views of frankpledge holden yearly within the same, and surveying of all Victuallers there, and correction and punishment of the offenders, and breakers of the Assise of the same, to be presented and amerced if default be found in the said Courts, &c. And where divers persons intending their singular avail and profit, and to oppress the said Victuallers, and to enter and break the liberty of divers places in this Realm having Franchises (*that is, Leets aforementioned*) and surveying of all Victuallers, and correction of the same, had purchased Letters Patents of King E. 4. to be surveyors and correctors of all such Victuallers within divers Cities, Boroughs, and other places, of Ale, a Beer, Wine, and other Victuals, &c. in *b* wrongful derogation of the Liberties and Franchises of the said Cities, Boroughs, and other places, &c. *as by the said Act is rehearsed.* It is established and ordained, that all Letters Patents granted by that King, or after to be obtained of any office of searching or surveying of Wine, Ale, Beer, or other Victual, shall be utterly void and of none effect. And that no person other then such Governors before rehearsed, &c. (*that is, in respect of their before rehearsed Leets*) shall use or exercise any such office, &c. And besides the declaration of the same to be void and against Law, a penalty of 40 l. is inflicted upon such as shall exercise any such office so obtained or after to be obtained. An excellent Act of Parliament both for the declaration of the Law in the case abovesaid, as also that the King by his Letters Patents cannot make any new office for the surveying, correction, &c. of any thing which belong to the Jurisdiction and Consuance of any former Court which by consequent hath a large extent, and therefore we have cited the same the more at large.

*a* These words follow after in the Act, and Nota by this it appeareth, that Beer is not of such late time as some suppose. See also Rot. Par. Anno 4 H. 4. nu. 53 Beer and Ale mentioned to be then in Calice. Beer is a Saxon word *Bier*, and Beer is within the word *Cervisia* in the ancient Statutes. For it is but as the putting of a new Button to an old Coat, *viz.* Hops to Malt and Water, to make it continue the longer. *b* Hereby it appeareth that those Letters Patents were against Law, and that this is a Statute declaratory with addition of a penalty.

Some do hold that it is within the Statute of 18 E. 2. some say as an incident to the Assise of Bread and Ale, & others hold that by that Act power is given to the Lord of the Leet to enquire of that Assise of Bread and Ale, that is to say, of the Statute intituled, The Assise of Bread and Ale, which is the said Act of 5 H. 3. in which Act sellers of corrupt Victuals are to be punished. And herewith (*say they*) agreeth the book in 1 R. 3. fo. 1. that of corrupt Victual the Leet had Jurisdiction by the Statute, howsoever that is conceived, it is the Leet that hath consuance thereof.

Pasch. 18 E. 2.  
Coram Rege Rot.  
76. South.

And albeit Malt, Brastum, be no Victual of it self, as it is adjudged in Anno 18 E. 2. Quod venditio brasii non est venditio Victualium, nec debet puniri sicut venditio Panis, Vini & Cervisia, & hujusmodi contra formam Statut. Yet because it is the principal ingredient of Beer, and serveth to Victual the Kings Household, &c. (as it is said in the Statute of 17 R. 2.) and tendeth, if it be corrupt and not wholsome, to the great hinderance of health and increase of diseases, we will examine how the Law standeth therein at this day.

17 R. 2. cap. 4.

Meale



**Malt** Malt is a Saxon word, in Latin we call it *Brasium* derived of *brasso*, 2. *ebullio, ferveo*. In the ancient Statutes *Brasinator* is taken for a Brewer. In *Fleta*, ubi *supra*, *Brasatrix*: in *Britton*, ubi *supra*, *Braceresses*, for Brewers. In Latin we use the word *Padoxator* or *Potifex*: and *Brasinator* at this day is used for a Maltmaker or Malster.

Malt is made of *Barley*, and cannot be well and perfectly made, unless it hath the time of 12 days in the making thereof, and both the making thereof in the *Fat*, *flour*, *steeping*, and sufficient drying of the said Malt 3 weeks at the least, 2 E. 6. cap. 10. except it be in the months of *June*, *July*, and *August*, and in those months by the space of 17 days at the least.

The Maltmaker ought not slackly and deceitfully dry the Malt, so the intent to have an inordinate increase thereof by swelling of the same, which being not sufficiently dried, within a short time will be musty and full of \* *Worms*.

\* *Gurguliones*.  
17 R. 2. cap. 4.

No person ought to put to sale any Malt which shall not be well and sufficiently trodden, rubbed, and well fanned, whereby they may be conveniently fanned out of one Quarter thereof half a peck of dust, or more.

No person shall mingle any Malt not being well and sufficiently made, or 2 E. 6. cap. 10. being made of *mow-burnt* or *spired Barley*, with other good Malt, and after put the same to sale. All these be mala in se, and punishable by the Common Law.

And this Statute of 2 E. 6. hath added a penalty, if the suit be brought upon this Statute. And if the Brewer put to sale any *beer*, which he hath brewed with unlawful (as all is unlawful that have not the qualities foresaid) and unwholesome Malt, he may be presented for the same in the *Leet*, &c. as selling of corrupt and unwholesome victual. And by this Statute power is given that the *Justices of peace* in every of their Sessions, and also the *Steward* in every *Leet* shall hear and determine, as well by presentment of 12 men, as by accusation or information of two honest witnesses of, for, and upon all and every the offences and forfeitures in that Act, &c. So as the *Justices of peace* or *Stewards* in *Leets*, may either proceed at the Common Law or upon this Statute. It is further provided by this Act, that the *Wardens* and *Constables* of every *Worrough*, and *Market town* or other *Town* where Malt shall be made or put to sell, shall from time to time search and survey the same; and if the same be found to be evil made or mingled with evil Malt, they by the advice of one *Justice of peace* shall cause the same to be sold at such reasonable price, and under the common price in the market, as to his discretion shall seem expedient. This Act extends not to the marketing of any Malt for a mans own provision for his own house or family. And the offences against this Act are to be presented within a year. 2 E. 6. cap. 10.

This Act of 2 E. 6. cap. 10. is continued, and yet standeth in force. 27 Eliz. cap. 4. 1 Jac. cap. 25. &c. 4 Car. cap. 4.

That which hath been said (*de malis in se*) of Malt, may also be applied to *Hops* another ingredient in *Beer*, and punishable by the Common Law. But against divers and many falsehoods practised in packing of *foreign Hops*, for that the subjects of the Realm have been by reason thereof of late years abused and received unto the value of 20 thousand pounds yearly at the least (for that in sacks of *foreign Hops* there is not found one third part to be good and clean Hops, the rest being dross and soil,) A good Law is made Anno 1 Jac. and every person offending therein shall forfeit the same Hops so brought into the Realm. And it is further enacted by the same Act, that if any brewer of *Beer* or *Ale* shall employ and spend any Hops unclean, corrupt, or mixt with any powder, dust, dross, sand, or any other soil whatsoever, he shall forfeit the value of those Hops so employed, to be recovered, &c. in any of the Kings Courts of Record. 1 Jac. cap. 18.

The reason wherefore these Courts of the *Town* and *Leet* are Courts of Record, and not the Courts of the County, of the *Hundred*, and of the *Court Baron* (whereof we shall next in order treat) is, for that the *Town* and the *Leet* are instituted for the Common-weal, as for conservation of the Kings peace, and punishment of common nuisances &c. And for conservation of the peace, the *Ward* in the *Town*, and the *Steward* in the *Leet* may take *Recognisances* for



keeping of the peace. But the said inferiour Courts of the County Hundred, and the Court Baron have Jurisdiction of private causes under the value of 40 s. between party and party.

---Fuit hæc sapientia quondam

Publica privatis secernere, sacra profanis.

And forasmuch as unclean, corrupted, and mingled Spices and Drugs be so unwholsome and hurtful, as they tend to the jeopardy of mans body, we will hereunto add the exposition of the Statute of 1 Jac. cap. 19. the penalty of Spices not garbled.

¶ Whereas heretofore great deceits and abuses have been committed in uttering, selling, and putting to sale sundry sorts of unclean, corrupt and mingled Spices, &c. garbleable: to the jeopardy of his Majesties person, &c.

¶ Garbleable.] To garble, signifieth in our legal understanding, to sever and divide the good and sufficient from the bad and insufficient; and extendeth not only to Spices and Drugs mentioned in our Statute, but to other wares and merchandizes. As for example. By the Statute of 1 R. 3. it is provided that no Bowstaves shall be sold ungarbled, &c. that is, until the good and sufficient be severed and divided from the bad and insufficient: and this garbling of Bows hath reference to the Statute of 12 E. 4. cap. 2. where garbling of Bows is well expounded, that is, that the Bowstaves be searched and surveyed, &c. and that such as be not good and sufficient be marked &c. Some think that it is derived from the French Verb, Garber, to make fine, neat, clean, &c. Others fetch it from Cribler and that of Cribrare to sift or sever the good from the bad, unde Cribrum, sic dictum, quia crebris pertusum est foraminibus ad res purgandas à pulvere & immundis ( unde Cribrarius, the Garbler ) which well agreeth with our Act.

A Sive and to sift do come from the Saxons, viz. *sif, sifc* This Act consisteth of a Preamble and a Body. In the Preamble it is rehearsed, That unclean, corrupt, and mingled Spices, Drugs, Wares, and Merchandises garbleable do tend to the jeopardy of his Majesties person, and of his subjects using the same in their meats drinks, and other needful occasions, &c.

The selling of such unclean, corrupt, and mingled Spices and Drugs used in meats and drinks, is malum in se, and (as hath been said) in divers like cases punishable by the Common Law. But this Act tendeth to the prevention of such deceits and abuses, by garbling and purifying of the same before they be sold, and by punishment if they be sold before they be garbled and purified.

All that is garbleable must be garbled and cleansed and sealed by the Garbler before sale, upon pain of forfeiture of the same or value thereof, for which an Action popular is given.

There be 32 kinds of Spices and Drugs by special name mentioned in this Act, viz.

1. Pepper. 2. Cloves. 3. Mace. 4. Nutmegs. 5. Cinnamon. 6. Ginger. 7. Long-pepper. 8. Worm-seeds. 9. Comin-seeds. 10. Any-seeds. 11. Coliander-seeds. 12. Bynny-pepper. 13. Almonds. 14. Dates. 15. Galls. 16. Spikenard. 17. Galingall. 18. Turmeric. 19. Setwell. 20. Cassia-histula. 21. Ginny-pepper. 22. Scme. 23. Barberies. 24. Rice. 25. Erins. 26. Stavescare. 27. Calamus. 28. Fennyrick. 29. Cassia. 30. Lignum. 31. Graines. 32. Caraway-seeds.

And in general words. 1. Gums of all sorts and kinds garbleable. 2. All other Spices, Drugs, Wares and Merchandises garbleable.

¶ Be it furthermore enacted, that if any of the said Spices, Drugs, Wares, or other Merchandizes be mixed with \* garbles, matter or thing whatsoever after the same be garbled, &c. That then the said Spices, Drugs, &c. or the value thereof shall be wholly forfeited.

¶ It

1 R. 3. cap. 11.

12 E. 4. cap. 2. the Statute appointeth who shall garble them.

\* Nota, Garbles signifie the dust or soil or uncleanness that is severed.

It shall and may be lawful for the Garbler of Spices, &c. within the City of London and the Liberties of the same, &c.

There hath been of ancient time an Officer in London and the Liberties of the same, called the Garbler of Spices, &c. who may make his Deputies. And this Act giveth him authority at all and every time and times <sup>\*</sup> in the day time to enter into any Shops, Warehouses, or Seller, to view and search such Drugs, Spices, &c. and to garble and make clean the same.

\* This had been implied if it had not been expressed.

There is a Proviso, that if any Merchant or other person (other than Merchants alien, or made or to be made Denizen) shall bring any Spice, Drugs, or other Merchandizes garbleable into this Realm, and shall not offer the same to sale or sell the same within this Realm, &c. and shall transport the same *bona fide* within eight moneths (accounting 28 days to the moneth) after his first landing, &c. shall not incur any of the penalties of this Act.

And this Proviso was added in respect of a general Law made in 16 R.2. 16 R.2. cap. 1. that no manner of Spicery, after that it be brought into the Realm, shall be carried out of the same by Alien or Denizen, upon pain of forfeiture of the same. And this Proviso extendeth only to the natural born Subjects, and not to Merchants alien, or made or to be made Denizens.

And by the Act of 16 R.2. cap. 1. it is enacted, that Aliens shall sell Wines by whole vessels, & Spicery by whole vessels and balls, and in no other manner. The Court of the Leet may inquire of these offences following by authority of Parliament.

De visu franc. Articles of the Leet, to which we will add

18 E. 2. De visu franc.

Concerning tracing and killing of Hares.

14 H. 8. cap. 11.

Of Hostlers making Horsehead under the assize.

32 H. 8. cap. 14.

Of breeders of Horses under statute.

32 H. 8. cap. 13.

Of Artillery, Futs, and Fows.

33 H. 8. cap. 8, 9.

Concerning shooting in Crossebows and Handguns.

33 H. 8. cap. 6.

Concerning Victuallers, Artificers, Workmen and Labourers.

2 E. 6. cap. 15.

Against great prices and excels of Wines.

7 E. 7. cap. 5.

For amendment of High ways. 2 & 3 Ph. & Mar. cap. 3. 5 Eliz. 13. 18 El. 9.

Concerning Puffers.

4 & 5 P. & M. c. 3.

For the preservation of the spawn and fry of Fish.

1 Eliz. 17. 1 Jac. 25.

Against taking of Pheasants and Partridges.

23 Eliz. cap. 10.

Against the erection of Cottages and Inmates. Hereof see before in this Chapter.

31 Eliz. cap. 7.

By these and divers other Acts of Parliament the jurisdiction of this Court of the Leet hath been much increased, to the end that the Subject might have remedy and justice at his own dozes: and therefore it is requisite that the Steward of this Court be learned in the Law, for Ignorantia Judicis est calamitas innocentis. See Rot. Parl. 51 E. 3. nu. 49. concerning Taverners.

The stile of this Court of the Leet is, Curia visus franc' pleg' tent' apud B. coram A. B. Seneschallo, &c.

Francus plegius Saxonice prebopogh Freboroe, Anglice, Fræpledge.

The Constables or petty Constables are chosen by the Common Law at the Leet or Tourn, and are by the Common Law conservators of the peace, and may take surety of the peace by Obligation, and are as ancient as Tourns or Leets be, and began not about the beginning of E. 3. as some have supposed: Vide the Chapter of the Hundred Court for the Chief Constable, & 9 E. 4. 36. 5 H. 7. 6. 11 H. 4. 12. 38 E. 3. 3.

3 H. 4. 9. 10 E. 4. 17

44 E. 3. bar. 202.

32 E. 3. ib. 259.

45 E. 3. ib. 214.

Vide Rot. Parl.

6 E. 3. post. nu. 6.

Fitz. Just. of

Peace 172.

3 E. 3. cor. 288.

12 H. 7. 18. Fineux.

But to say once for all: Repetition without addition is but loss of time, and altogether unprofitable.



## CAP. LV.

*The Court of the County.*

See the second  
part of the Inst.  
Mag. Cart. c. 35.

Lib. 6. fol. 12.  
Gentlemans case.  
Stat. de Merton  
cap. 3. 44 E. 3. 10.

2. part of the Inst.  
Mag. Cart. cap. 35.  
F.N.B. 119. g. h.  
Ib. 85. g. & c.  
& 138. b. & c.

4 Eliz. Dier 222.  
15 Eliz. 317. a.

**T**HIS Style of this Court is: Buck. Cura prima Comitatus E. C. Militis vicecomitis Com' prædict' tent' apud B. &c. And the next Court Curia secunda E. C. vicecom' Com' prædict' &c. And so forth.

See the Statute of W. 2. c. 36. against procurement of Suits in this Court.

This Court is no Court of Record, and the suitors are the Judges thereof. But in a Redisseisin the Sheriff is Judge by the Statute of Merton cap. 3. and a Writ of error lieth of his judgment.

Of the antiquity and jurisdiction of this Court, you shall read in the Statute of Magna Carta, c. 35. It holdeth no plea of any debt or damages to the value of 40 s. or above, nor of any trespass done vi & armis, because a fine is due thereby to the King. But of debt, detinue, trespass, and other actions personal above 40 s. the Sheriff may hold plea by force of a Writ of Justicies to him directed, for that is in nature of a Commission to him, and is Vicountel, and not retournable. And he may before any County Court award a Summons to his Bailly retournable within 2 or 3 days at his discretion, to summon the defendant by his goods &c. to answer; and if the Bailly retourn Nihil, and the plaintiff removeth the same by a Pone into the Common Pleas, that Court shall not grant a Capias, for the nature of the Writ doth not warrant a Capias, and the Sheriff could not grant the same, neither doth the Writ of Justicies alter the nature of the Court of the County, for therein the Sheriff is not Judge, but the Suitors; and upon a Judgment given therein a Writ of false judgment doth lie, and not a Writ of error. And in divers real actions a Writ of Justicies doth lie as it appeareth in our books, as in Brē D' admesurement of dower or pasture, in Customs & services, Mesne, Quod permittat, Rationabilibus divisis, Sect' ad molend', de nuisans, de Curia claudenda, Annuity, &c.

In the County Court upon the Exigent after 5 exact', the Coroners give judgment, Ideo utlagetur per judicium Coronatorum. But by this Judgment no goods are forfeited before the Outlawry appear of Record: and that is the reason that no man can claim the goods of Outlaws by prescription. Neither shall such an Outlawry disable the party: but if upon a Certiorari to the Coroners they certify the Outlawry, this shall serve the King for the forfeiture of his goods, but shall not disable the party till the Exigent be returned.

## CAP. LVI.

*The Court of the Hundred.*

**T**his is no Court of Record, and the Suitors be thereof Judges. Of the antiquity and jurisdiction hereof vide Magna Carta, ubi sup. And as the Let was derived out of the Tourn for the ease of the people, so this Court of the Hundred for the same cause was derived out of the Court of the County, and is a Court Baron in his nature.

2 part of the Inst.  
Mag. Cart. cap. 35.  
12 H. 7. 18.

By the Statute of 14 E. 3. Hundreds (except such as then were of estate in fee) are rejoyned (as to the Bailiwick of the same) to the Counties, and all grants made of the Bailiwick of Hundreds since that Statute are void, and the making of the Bailiffs thereof belong to the Sheriff, for the better execution of Justice and of his Office. And so it was resolved by the Lord Treasurer Lea and all the Barons of the Exchequer, and so decreed in the Exchequer Chamber, between Fortescue of Buckinghamshire plaintiff, and the Sheriff of the same defendant, Term 2. Caroli Regis, the plaintiff having of late divers Hundreds granted to him for life in the County of Buck, reserving a rent, which the Sheriff disallowed and put in Bailiffs of his own. And a commandment was given by the Court to the Attorney General to avoid the like in other Counties, for that they were against Law, and belonged to the office of the Sheriff, and were occasions of delays and hinderances of Justice. See the Statute of W. 2. cap. 36. against procurement of suits in this Court.

14 E. 3. cap. 9.  
4 E. 3. cap. 15.

The stile of this Court is, Curia E. C. militis hundredi sui de B. in com. Buck tent', &c. Coram A. B. Seneschallo ibidem.

If there be a Bailiff of a Liberty appointed by the Lord of the Liberty, or the Sheriffs Bailiff of any Hundred, Wapentake, or Tything, which have not Lands or Tenements sufficient in that County, there lieth a Writ De Balivo amovendo, grounded upon the Statute of 4 E. 3. cap. 9. There are Constables of the Hundred commonly called, chief Constables, so named, because Constables of Towns are called petit Constables. These Constables of Hundreds were created by the Statute of 13 E. 1. and their authority limited to five things. 1. To make the view of armor. 2. To present before Justices assigned such defaults as they do see in the Country about armor. 3. To present defaults of suits of Tourns. 4. Of High ways. 5. To present all such as lodge strangers in uplandish Towns, for whom they will not answer. Divers and many Acts of Parliament have given the chief Constable and petty Constable more authority and power then originally they had, which hath been well collected by others. For no Officer that is constituted by Act of Parliament hath more authority then the Act that creates him, or some subsequent Act of Parliament doth give him, for he cannot prescribe as the Officer by the Common Law may. Nota 10 E. 4. f. 17. the petit Constable was an Officer by the Common Law per Curiam, Vid. 4 E. 3. c. 3. 25 E. 3. c. 2. See in the Chapter of Hue and Cry in the Third part of the Institutes, Hue and Cry always by the Common Law made by the Constables of Towns, &c.

9 E. 2. Line' Stat.  
Unicum.  
4 E. 3. cap. 9.  
5 E. 3. cap. 4.  
Register 178.  
F. N. B. 164. b.

Stat. de 13 E. 1.  
De Winch. c. 6.

Lambard, &c.  
See cap. Lett for  
the petty Constable.

Fleta lib. 1. cap. 2. § De Vic' & Constabulariis, &c.



## CAP. LVII.

*The Court Baron.*

See the second  
part of the Inst.  
Mag. Cart. cap. 25

**T**his is a Court incident to every Mannor, and is not of Record, and the Suits be thereof Judges, although the Plea be holden by force of a writ of right.

There is also a Customary Mannor whereof you may read in the First part of the Institutes, Sect. 73. Verb. Court, &c.

And this was first instituted for the ease of the Tenants, and for the ending of debts and damages under 40 s. at home, as it were at their own doors.

1. part of the Inst.  
Sect. 73.

Soe there for the antiquity and institution of this Court, and the Articles inquirable therein are usual and well known.

The stile of the Court is, Curia Baronis E. C. Militis manerii sui prædicti (having the Mannors name written in the Margent) ten' tali die, &c. coram A. B. Seneschallo ibidem.

In the reign of E. 1. we have seen Court Rolls having the Mannors name in the margent. Aula ibidem ten' tali die, &c. the Court of the Mannor being so called, because it was holden in the Hall of the Mannor: as the Court of the Marshalsea is called Curia Aulae Hospitii Domini Regis, because of ancient time it was holden in the Kings Hall.

## CAP. LVIII.

*The Court of ancient Demesne.*

**T**Hose Mannors are called the ancient Demesnes of the Crown which were in the hands of St. Edward the Confessor or William the Conqueror, and so expressed in the Book of Domesday, made or begun in the 14 year of William the Conqueror; for so we find it in Libro Rubro Scaccarii in Custodia Rement Regis fo. 47. quod liber vocatus Domesday composuitur fuit Anno 14 Willielmi Regis Conquestoris. And Radulphus Niger Monk of Cogithall in Essex in vita Willielmi Conquestoris hath these words, Annis 1081, 1082, 1083, 1084, 1085, 1086, Rex Willielmus describi fecit omnes Barones & feudatos Milites, & quot carucatas terræ quisque habebat & redditus possessionum. And Anno Domini 1081, was the 14 year of William the Conqueror; and this great and excellent survey lasted 6 years. And in Lucubrati Okham, it is worthily called Liber Judicatorius, because it is the only trial of ancient Demesne; against which, for the uncontrollable truth and verity thereof, there can be taken no averment. And therefore in that respect like the doom and judgment at Doomesday.

In Chant Archie. Cant': Sandwice in anno quo facta est hæc descriptio. In Domesday it self lege librum, for hereby it appeareth that it was made in the time of the Conqueror.

All those that hold of these Mannors in Socage are Tenants in ancient Demesne: and they plowed the Kings Demesnes of his Mannors, sowed and harrowed the same, mowed and made his Medows, and other such services of husbandry for the sustenance of the King and his honorable household, maintenance of his stable, and other like necessities pertaining to the Kings husbandry. And to the end these tenants might the better apply themselves to their labours for the profit of the King, they had Six privileges. First, that they should not be impleaded for any their Lands, &c. out of the said Mannor, but have Justice administered to them at their own door by the little Writ of Right Close directed to the Bailiffs of the Kings Mannors, or to the Lord of the Mannor, if it be in the hands of a subject; and if they were impleaded out of the Mannor, they may abate the Writ. 2. They cannot be impannelled to appear at Westm. or elsewhere in any other Court upon any inquest or trial of any cause. 3. They are free and quiet from all manner of Tolls in Fairs and Markets for all things concerning husbandry and sustenance. 4. And of Taxes and Tallages by Parliaments, unless they be specially named. 5. And of contribution to the expenses of the Knights of the Parliament, &c. 6. If they be severally distreined for other service, they all for saving of charges may join in a Writ of Monstraverunt, albeit they be several Tenants.

These privileges remain still, although the Mannor be come to the hands of Subjects, and although their service of the plough is for the most part altered and turned into money: Avera in Domesday Grentbrigh Rexfordham, sed tamen semper inveniat averam vel 8 d. in servicio Regis, that is, a days work of a Ploughman, or 8 d.

This Court is in nature of a Court Baron, wherein the Suitors are Judges, and is no Court of Record, for Brevia Clausa Recordum non habent.

Nota, the Demandant in a Writ of Right Close cannot remove the plea out of the Court of the Lord for any cause, the Tenant may remove the same for 7 causes, viz. 1. For that beholdeth it ad Communem legem. As if a fine and recovery be levied or suffered thereof in the Court of Common pleas, this maketh the Land frank for so long as they stand in force. 2. If the Land be not holden of the Mannor being ancient Demesne. 3. If the Land be holden by Knights

R n

service :

See the second part of the Instit. W. 1. c. 31. f. 221.

See 21 E. 3. 32.

Herein Fitz. in his N.B. fo. 16. ascribing it to Edw. the Confessor, was deceived. Vid. the Preface to the third Book of my Reports.

See the second part of the Instit. Art. sup. Cart. ca. 21

The privilege of Tenants in ancient demesne.



\* Regist. fo. 17 E. 3.  
 44. F.N.B. 14.c.  
 41 E. 3. 22.  
 49 E. 3. 7.  
 50 E. 3. 14.  
 † *Domesday sepe herciare or herseare of the French word [herse.]*  
*a Vid. li. 5. fo. 105.*  
 Allens case.  
 44 E. 4. 38.  
 46 E. 3. 1.  
 49 E. 3. 7. 44 E. 3.  
 22. 21 E. 3. 10. 32.  
 40 E. 3. 4.  
 28 E. 3. 95.  
 34 E. 1. Anc' demesne 98. 21 E. 4.  
 Anc. demesne 6.  
 22 Aff. 45.  
 F.N.B. 136.k.  
 30 E. 3. 12.  
 b 2 E. 2. Execut.  
 118. 15 E. 3.  
 ib. 62. 8 E. 4. ib.  
 136. 7 H. 4. 19.  
 Lib. 5. fo. 105.  
 19 H. 6. 64.  
 c 4 E. 2. Redisseisin  
 9.  
 d 7 H. 6. 35. 8 H. 6.  
 34. 32 H. 6. 35.  
 F.N.B. 189.g.  
 Lib. 5. fo. 105.  
 Allens case.  
 22 El. Dier 373.  
 7 H. 7. 11.  
 e 2 E. 4. 26. 8 E. 4.  
 6. 7 H. 4. 44.  
 8 H. 4. 24. 17 E. 3.  
 31. Trin. 16 E. 3.  
 Coram Rege Rot.  
 132. Eborum.  
 Tr. 13 E. 3. Coram  
 Rege Rot. 108.  
 Glouc' (finis)  
 Tr. 3 H. 5. Coram  
 Rege Rot. 9. Essex  
 (finis) 21 E. 3. 20.  
 56. 21 Aff. 4.  
 26 E. 3. 63.  
 f Vid. Dier 22 El.  
 373.  
 g 3 E. 3. 9. F.N.B.  
 19. d.  
 h Dier 22 El. 373.  
 27 Aff. 5. 44 E. 3.  
 38.  
 i 21 E. 3. 32.

service: for, as hath been said, the service of the Plow and Husbandry is the cause of the privilege. 4. \* If there be no suitors, or but one suitor, for that the suitors are Judges, and therefore the Demandant must sue at the Common Law, for that there is a failure of Justice within the Mannor. 5. If the Tenant accept a release of his Lord of his seignior, or the seignior be otherwise extinguished by reason of the seisin of the King or otherwise. 6. Or if the Lord disseise his Tenant and make a feoffment in fee. 7. If the Lord grant the services of his Tenant, and the Tenant attorn.

† Arabant & herciebant ad curiam domini. i. they did plough, and harrow at the Mannor of the Lord.

‡ And this privilege doth not extend to matter personal actions, as debt upon a Lease, Trespass, Quare clausum fregit, and the like, in which by common intendment the title of the freehold shall not come in debate. But otherwise it is of all real actions, and also in actions of Account, Replevin, Ejectione firmæ, Writ of Mesne and the like, where by common intendment the realty shall come in question.

b Lands in ancient demesne are extendable upon a Statute Merchant, Staple, Elegit, and regularly all general Statutes extend to ancient demesne.

c But a Redisseisin, although they concern the realty, doth not lie in ancient demesne, because the proceeding in a Redisseisin is appointed by the Statutes to be made by the Sheriff, assumptis secum Coronatoribus Comitatus, &c. and in ancient demesne there are no Coroners, d but otherwise it is in an action of Waste.

And as the Tenants in ancient Demesne are careful to preserve their privileges, so the Lord is as careful to preserve his seignior, and the tenure of this tenancy in ancient demesne. e And therefore if the Tenant levy a fine, or suffer a recovery in the Court of Common pleas, &c. whereby for the time the land is become frank free, the Lord by a Writ of Disceit may not only restore himself to his true seignior, but utterly avoid the fine, and restore his Tenant against the recovery and his own fine to the Land again in his former estate: and the reason thereof is, for that the recovery or fine was not suffered or levied before a competent Judge in the right Court, which ought to have been in the Court of ancient Demesne, f and therefore after the reversal in the Writ of Disceit, it is now tanquam coram non Judice, and the parties to the fine or recovery shall be fined and imprisoned pro deceptione Curie.

g But if in a Writ of Right close in ancient Demesne, the Demandant maketh his protestation to sue in the nature of Assise of Mortor, the Tenant plead in abatement of the Writ, and the Writ by Judgment is abated, the Demandant brings a Writ of false judgment, wherein the Writ is affirmed to be good, the Court of Common pleas shall proceed as the inferior Court should have done, and although that judgment be given to recover the Land in the Common pleas, yet the Land is not frank free, but remains ancient Demesne, because the beginning and foundation thereof was in ancient Demesne.

h They may levy a fine in ancient Demesne which by a Custom it is said to be a bar of the estate tail; but certainly that will not hold.

i If the Tenant remove the plea for the cause mentioned in the Recordare, he may come into the Kings Court, and assign other cause, and twenty, if he hath, to maintain the Jurisdiction of the Kings Court.



## C A P. LIX.

*The Court of the Coroner.*

**T**His Coroner Coronator is so called, because he deals principally with Pleas of the Crown, or matters concerning the Crown: He is eligible by the Freeholders of the County, and so continues to this day, as of ancient time the \* Sheriff and a Conservators of the peace were, because the people had a great interest and safety in the due execution of their offices, and so long as they were eligible, they continued, notwithstanding the demise of the King, as the Coroner doth to this day. And of ancient time this office was of great estimation, for none could have it under the degree of a Knight. b And it appeareth by the Writ De Coronatore eligendo, that he must have two properties, viz. sufficient knowledge, ability and diligence in execution of his office, implied in these words, Et talem eligi facias, qui melius sciat, & possit officio illi intendere. c And the Sheriff after he be elected, shall give unto him his oath duly to execute his office: And the Court which he holdeth is a Court of Record. And commonly there are Four in every County of England; but in the twelve shires in Wales, and in Cheshire there are but two,

Now concerning his Jurisdiction, what it was before the Statute of Magna Carta, and what he hath at this day, and of his Antiquity, you may read in the Second part of the Institutes, Mag. Cart. cap. 17. and the Exposition upon the same. Merton cap. 3. Rediffesin, and W. 1. cap. 10. & 26 & Artic' super Cart. cap. 3. and the Exposition of the same.

He is to take nothing for doing his office upon grievous forfeiture, but by 3 H. 7. he is to have upon an indictment found of murder 13 s. 4 d. of the goods of the murderer, and if he hath nothing of the amercement of the Township for the escape, &c. See also the ancient Authors, Mirror des Justices, Cap. 1. §. del office del Coroner. Bracton Lib. 3. fo. 121, 122, 123. Britton cap. 1. Fleta lib. 1. cap. 18. Statutum de anno 4 E. 1. de officio Coronatoris, and Stanf. Pl. Coronae fol. 48, 49, 50.

And as the Sheriff in his Tourn may enquire of all Felonies by the Common Law, saving of death of man, so the Coroner can enquire of no felony but of the death of man, and that super visum corporis: He shall also enquire of the \* escape of the murderer, of Treasure Trove, Deadlands, and Wrecks of the Sea. But hereof you shall read more in the Authorities before cited, and in the Third part of the Institutes, in the title of Appeals.

He ought to deliver the Inquisition of death taken by him at the next Gaol-delivery, or certifye the same into the Kings Bench. \* Upon an Inquisition found before him of murder or manslaughter, he ought to put in writing the effect of the evidence given to the Jury before him being material, and hath power to bind over witnesses to the next Gaol-delivery in that County. See before in the Chapter of the Courts in London.

To conclude, besides his judicial place, he hath also authority ministerial as a Sheriff, &c. viz. when there is just exception taken to the Sheriff, judicial process shall be awarded to the Coroners for the execution of the Kings Writs, in which cases he is locum tenens Vicecomitis, and in some special case the Kings original Writ shall be immediately directed unto him.

In defectu Vic' pro brevibus Regis exequendis, videtur curiæ hic quod aliis quam Coronatoribus non est demandand'. Vide Vet. Mag. Cart. part 2. fo. 19, 20, 21. Stat. Exonik. Fleta Lib. 1. Cap. 18.

Regist. 172.  
F. N. B. 164.

\* Artic. sup. Cart.  
cap. 8. & 13.  
12 R. 2. cap. 2.  
14 E. 3. cap. 7.  
4 Ro. Par. 4 E. 1.  
Lambard Justice  
of Peace. 16. b.  
b Regist. 177.  
F. N. B. 164.  
Stanf. 48. c.  
W. 1. cap. 10.  
c 14 E. 3. ca. 8. He  
must have suffici-  
ent Land in the  
County whereof  
he may answer all  
people.  
F. N. B. 164.  
34 H. 8. 35 H. 8.  
cap. 13.

3 H. 7. cap. 1.  
Vet. Mag. Cart.  
4 E. 1. part 1. 119.  
Stanf. 49. c. f.

35 H. 6. 23.  
\* 3 H. 7. ca. 1.  
4 E. 1. ubi sup.

3 H. 7. ca. 1.  
\* 1 & 2 Ph. & M.  
cap. 13.

Pl. Com.

Pasch. 9 E. 3. Co-  
ram Rege Rot. 80.  
Ebor. West.



## CAP. LX.

Bract. l. 5. f. 334. a.

*The Court of Pepoudres, vulgarly Pipowders,  
Curia pedis pulverisati.*

Bract. l. 5. f. 334. a.

6 H. 4. 3. 6 E. 4. 3. b.  
7 E. 4. 23.  
Lib. 6. fo. 12. a. & 20.  
\* See before Cap.  
Justices in Eire,  
simile pag. 185.  
a Mic. 42 & 43 El.  
Coram Rege.  
Lib. 10. f. 61. En le  
case del Marshallley  
Jones case.

b 7 H. 6. 18, 19.  
Kelw. 23 H. 7. 99.  
Doct. & St. fo. 11.  
3 Mar. Dier 132.  
Int' Hall & Pinder.  
45 E. 3. 1. 1 H. 4. 6.  
13 H. 7. 19. b.  
12 H. 7. 16, 17.  
c 13 E. 4. 8. b.  
8 H. 7. 4. 5. 12 E. 4.  
9. 19 H. 8. Br. in-  
cidents 34.  
12 H. 6. 3. b.  
d 17 E. 4. c. 2.  
1 R. 3. cap. 6.

**T**his Court is incident to every Fair and Market, as a Court Baron to a Manor, and is derived of two Latine words, as is apparent, and so called, because that for contracts and injuries done concerning the Fair or Market, there shall be as speedy justice done for advancement of Trade and Traffick, as the dust can fall from the foot, the proceeding there being de hora in horam. And therefore Bracton saith, Item propterea qui celerem debent habere justitiam, sicut sunt mercatores quibus exhibetur Justitia *Pepoudrous*, &c.

This is a Court of Record to be holden before the Steward of the Court, and the Jurisdiction thereof consisteth in Four conclusions. 1. The contract or cause of action must be in the same time of the same Fair or Market, \* and not before or in a former. 2. It must be for some matter concerning the same Fair or Market, done, complained on, heard and determined. 3. It must be within the precinct of that Fair or Market. 4. The Plaintiff must take an oath according to the Statute of 17 E. 4. ca. 2. but that concludeth not the Defendant. a And all this was resolved and adjudged in a Writ of Error brought by Hall against Jones, and the case was this: Jones being Register of the Bishop of Glouc', brought an Action upon the case in a Court of Pipowders belonging to the Market in Gloucester against Hall for these words: Master Jones and his Clerks have by colour of his office extorted and gotten 300 l. per annum, by unlawful means, for many years together, above their ordinary fees, for proving of Testaments and granting Administrations. And not guilty being pleaded, &c. it was tried and adjudged for the Plaintiff; and divers errors were assigned, but the Judgment was reversed for these errors following. 1. That this Court of Pipowders, being incident to the Market, hath no Jurisdiction but of such things as concern the Market; and these slanderous words did in no sort concern the Market: but if one slander the wares of any in the Market, whereby he cannot make sale of them, an Action doth lye in that Court. 2. It appeared in the Record that the words were spoken the day before the Market; b and no Action lyeth in that Court but for an injury within the Jurisdiction of the Court done, complained on, heard and determined on the same Market day, the proceeding being de hora in horam, and within the precinct of the Market. And herewith agreeth 3 Mar. Dier 132. And it was resolved that this Court was incident as well to a Market, as to a Fair.

c And there may be a Court of Pipowders by custom without Fair or Market, and a Market without an owner. Another error was assigned, for that it is provided by the d Statutes of 17 E. 4. and 1 R. 3. that no plea shall be holden in the Court of Pipowders, except the Plaintiff or his Attorney will make oath, that the contract or other deed contained in the Declaration was done or committed within the time of the Fair: but this Error was disallowed by the Court, for although this ought to be done, if the Defendant will stand upon it, notwithstanding it shall not be made part of the Record.

Vide Lib. Intrat. Rast. fo. 464. Pipowder 1, 2. fo. 18. Execution 3. fo. 158. Gaoler 1.



## CAP. LXI.

*The Court of the Clerk of the Market.*

**H**is to this day called Clericus Mercati Hospitii Regis, for of ancient time there was a continual Market kept at the Court gate, where the King was better served with Meats for his household then by Purveyors, the subject better used, and the King at far less charge in respect of the multitude of Purveyors, &c. And the Officer of the Market of the Kings household retaineth his name still, although the good end thereof according to the first Institution ceaseth.

The Clerk of the Market shall hold no plea but such as were holden in the Reign of E.1. And at this day there is no great need of him, for the Justices of Assise, the Justices of Oier and Terminer, Justices of Peace, and the Sheriffs in their Tourns, and the Lords in their Vets, may and do inquire of false weights and measures.

He doth keep a Court and inquireth of weights and measures whether they be according to the Kings standard or no, and for that purpose he maketh processes to Sheriffs and Bailiffs to return Pannels before him, &c. And he is to deliver the Estreats of those things which touch his office into the Exchequer.

Of Drink (that is to say) of Wine, Ale and Beer, and of Corn and Grain there ought to be but one measure: Una mensura vini, Cervisie & bladi, & Virgæ, and of all other merchandize per totum regnum. De ponderibus vero sicut de mensuris.

cap.3. 9 H.5. cap.8. 11 H.7. cap.4. 12 H.7. cap.5. 1 H.5. cap.10.

But notwithstanding these Statutes there be within this Realm two kind of weights, the one called Troy weight, which is commanded by the Statute, and this derived from the grain or corn of barley from the midst of the Ear and dry. 24 of these corns or grains make a penny weight, and 20 of these penny weights make an ounce, and 12 ounces make a pound Troy. A grain contains 20 minutes, a minute contains 24 droits, a droit contains 24 blanks. 12 grains of fine gold make a Carat. 24 Carats of fine gold make an ounce, and 12 ounces make a pound of fine gold. By this Troy weight are weighed according to Law pearls, precious stones, gold and silver, bread, wheat, and such like.

There is another kind of weight called Aver de pois. A pound of this consisteth of 16 ounces, every ounce having twenty penny weight, every penny weight 24 grains, and  $\frac{1}{2}$  of a grain. It is called Aver de pois, because thereby they have full measure. Hereby are weighed all Physical drugs, Wax, Pitch, Tar, Iron, Steel, Lead, Hemp, Flax, Flesh, Butter, Cheese, and divers other commodities, but specially every commodity subject to wast. There was another weight called the Ancel or Ansel weight, which was when the Scales were fixed to a beam or staff, and he that weighed by it, used his forefinger or hand in the midst, wherein was great deceit, and therefore is put out by the Statute of 25 E. 3. cap. 9. 34 E. 3. cap. 5. 8 H. 6. cap. 5. It is derived ab Ansa, which is the handle of the ballance, and this weight was guided by the hand.

Measures of Troy be of three kinds, viz. of things that be dry, of Liquor, and of Longitude, latitude and profundity.

Of dry things, 4 grains make a penny weight, 20 penny weight make an ounce, 12 ounces a pound or pinte (for a pound weight is a pinte in measure)

two

Britton fol. 75. b.  
Fleta l. 2. c. 20.  
Rot. Par. 50 E. 3.  
nu. 87. & 152.  
13 R. 2. cap. 4.  
32 H. 8. cap. 20.  
17 H. 8. c. 24.  
Lib. Int. Co. 445.  
a See the 2. part  
of the Institutes,  
23 E. 1. Artic. sup.  
Cart. cap. 2. and  
the Exposition  
thereupon.  
b Rot. Par. 8 H. 4.  
nu. 82.  
c 16 R. 2. cap. 3.  
d Stat. de modo  
mittendi extract.  
in Scaccarium.  
Anno 16 E. 1. &  
15 E. 2.  
e Mag. Cart. c. 25.  
27 E. 3. cap. 10.  
25 E. 3. cap. 9.  
24 E. 3. cap. 12.  
13 R. 2. cap. 9.  
15 R. 2. 4. 16 R. 2.  
1 H. 5. cap. 10.  
¶ weights.  
Trucina Campana.  
Ordinatio mensu-  
rar' 31 E. 3.

Ordinatio mensur'  
31 E. 1. ubi sup.



two pounds or pintes make a quart, two quarts make a pottle, two pottles make a gallon, two gallons make a peck, four pecks make a bushel, four bushels make a comb, two combs make a quarter, six quarters make a wey, and ten quarters make a last.

¶ Of Liquez 12 ounces make a pound, 8 pound make a gallon of wine, 8 gallons of wine make a Bushel of London, which is the 8 part of a Quarter.

Of wine see the Statutes of 1 R.3. cap.13. 28 H.8. cap.14.

See Assisa Panis & Cervisia.  
51 H.3.

Of Ale and Beer

the Ferkin	8	} Gallons.
theilderkin	16	
the Farrel	32	
the Hoghead or Quarter	63	

Et sic de cæteris.

Vet. Mag. Cart. f. 31  
32. 2 part.

Ibidem 44. b.

Compositio ulna-

rum & perticarum

Vet. Mag. Cart.

2 part. 45, 46.

An. 31 E.1. Statut.

de terris mensur.

See the Statute Compositio de Ponderibus.

Statut de Pistoribus, Vet. Mag. Cart. 2 parte 23, 24.

Statut Panis & Cervisia.

¶ Of Longitude, Latitude, and profundity. 3 grains of barley in length make an inch, 12 Inches make a foot, 3 foot make a yerd, a yerd and a quarter mak an ell, 5 yards and a half make a perche, 40 perches in length make a furlong, 8 furlongs make a mile.

I may speak of the sellers by the weight of Aver de poys, as Tacitus spake of the Augures in Rome. Hoc genus hominum semper vitabitur, & semper in Civitate retinebitur.

W.1. An. 3 E.1.  
cap. 26.

But now let us see what sees the Clerk of the Market ought to take. By the Statute of W.1. cap. 26. it is enacted that no Sheriff or other Minister of the King shall take any reward for doing his office, &c. And the Kings Clerk of the Market is the Kings Minister, and therefore he is within the purview of this Statute.

Rot. Par. 8 R.2.  
du. 11.

I find that in 8 R.2. in open Parliament a Goat was allowed to him for marking and sealing of every bushel, 2 d. of every half bushel, 1 d. of every peck, and so according to that rate.

7 H. 7. cap. 3.  
11 H.4. cap. 4.

By the Statute of 7 H.7. the chief Officer of every City and Borough shall take for sealing of every bushel a penny, of every other measure a half penny, of every hundred weight 1 d. and of every half hundred ob. and of every weight under a farthing, and not above.

13 R.2. cap. 4.  
38 Ass. p. 11.

The Clerk of the Market in the reign of D. Eliz. claimed by custom for the examination and view of every bushel sealed before by the Clerk of the Market, whether it were lawful or unlawful 2 d. and in like manner of every lesser measure of wood 1 d. and in like manner of Inholders measures 4 d. and of the measures of Victuallers 2 d. and divers other sees for examination and viewing of weights and measures whether they were lawful or unlawful, as is aforesaid. And it was resolved by all the Judges of England, that no see was due to the Clerk of the Market for view and examination only of weights and measures for three causes. 1. The said Parliament Roll of 8 R.2. alloweth a see for sealing, and so doth 7 H.7. and 11 H.7. but no allowance for view or examination. 2. The weights and measures are either true, according as before they were sealed, or false: if true, it should be against reason to charge the innocent, for that were disperdere justum cum impio; if false, then by the Statute of 13 R.2. they ought to be burnt, and the end of the view and examination is to find out falshood, to the end they might be punished, and fined to the King, as appeareth by the Statute of 13 R.2. but no fee is to be taken therefore. 3. Whereas the Clerk of the Market affirmed, that these fees had been of long time taken, the Judges said, that malus usus abolendus est, and the taking of fees for view and examination only was extortion, and that they could not prescribe against the said Statute of W.1. See in the 2. part of the Institutes, the exposition of the said Statute of W.1.

By the said Statute of 13 R.2. he ought to take no common fine, for before that Statute



Statute he did use to take a reward (which the Act tearmeth a fine) for not inquiry of defaults; whereby the King was prevented of his fine, the delinquent not punished, and the people wronged by extortion and permission of false measures; and therefore the Act provided that no common fine shall be taken, as is also said, but that every person which is found in default touching the same office be punished according to his desert. And the Clerk of the Market cannot set any price of any thing saleable in the Market, for that belongs not to weights and measures; and by the Common Law Arbitrio Domini res æstimari debet, which cannot be altered but by Parliament; and again, Nemo cogitur rem suam vendere etiam iusto precio; and things saleable in the Market of one kind are not of one goodness: but he ought to assise weights and measures.

12 E. 4. 8. b. 23 E.  
3. c. 6. 13 R. 2. c. 8.  
3 H. 8. c. 8.

6 R. 2. cap. 13.  
Rot. Par. 37 E. 3.  
nu. 39.

It is enacted that good examination and correction be had in Towns infrachised touching weights and measures, so as the \* Statutes thereof made be duly observed.

\* Which are before in this Chap.

## C A P. LXII.

### *The Court of the Commissioners of Sewers.*

**Q**uando a aqua profluit, that is, when water doth issue, vulgarly, sue: hereupon cometh the word Suera, for a sewer, passage, channel or gutter of water.

*b* At the complaint of Henry de Lacye Earl of Lincoln, a Commission of Sewers was granted to Roger de Brabazon Mayor, and the Sheriffs of London.

*c* Their authority is by Commission under the Great seal in hæc verba, at this day grounded and warranted by the Act of Parliament 23 H. 8.

*d* Of their jurisdiction you may read in my Reports, and see the Statutes of 6 H. 6. c. 5. 8 H. 6. c. 8. 23 H. 6. c. 9. 12 E. 4. c. 6. 4 H. 7. c. 1. 6 H. 8. c. 10. 23 H. 8. c. 5. & 10. 3 E. 6. c. 8. 1 Mar. c. 11. 13 El. c. 9.

Certain necessary observations upon some of these Statutes, and principally wherein the Statute of 23 H. 8. c. 5. hath been explained, declared, or altered by any of the said subsequent Statutes.

*e* 1. This Commission shall be granted to such substantial and indifferent persons as shall be named by the Lord Chancellor, the Lord Treasurer, and the two Chief Justices, or any three of them, whereof the Lord Chancellor to be one.

*f* 2. Every Commissioner before he take upon him the execution thereof shall take the Corporal Oath mentioned in that Act before the Lord Chancellor, or such as the Lord Chancellor shall direct by Writ of Deed Potestatis, or before the Justices of Peace in their Quarter Sessions, and ought to have lands or tenements of the clear yearly value of 40 Marks of some estate of freehold (except as in the Statute is excepted) upon pain of forfeiture of 40 l. and no Farmer of lands within the Precinct of the Commission, unless he hath lands of some estate of freehold of the yearly value of 40 l. and yet he not to meddle with the lands he hath in farm.

*h* 3. The avowry or justification for a distress taken by force of this Commission shall be general, that the said distress, &c. was taken, &c. by force of the Commission of Sewers for a lot or tax assessed by the said Commission, or for such other Act or cause, &c.

*i* 4. There must be six Commissioners, &c. at the least, which shall sit by force of the said Commission.

*k* 5. That the said Act of 23 H. 8. doth not extend to, nor give authority to the

*l* How many Commissioners must sit. *k* 1 Mar. c. 11. To what nuisances the Commission of Sewers extend not.

*a* Vid. Pasch. 22 E.  
1. in Banco. Rot.  
52. Kanc' Ric' de  
Gras Com' de Se-  
wers. Vid. Regist.  
287. a. Certiorar'.  
*b* Rot. Parl. Anno  
35 E. 1. at Carlisle  
*c* 23 H. 8. cap. 5.  
*d* Lib. 5. f. 99, 100.  
Rooks case. Lib. 10  
fo. 137. Le case de  
Molin de Chester, &c.  
f. 139. Keighleys  
case.  
Ib. 141. Le case de  
Isle de Ely.  
Vid. Regist. 252. b.  
De antiqua tren-  
chea obstruenda  
& nova facienda  
vel habenda Ad  
quod damnum.  
Ibid. 254. b. De  
aquæ ductu, &  
255. a.  
F. N. B. 225. c.  
Tr. 31 E. 3. f. 44. b.  
In libro meo M. S.  
19 E. 3. barr 279.  
e 23 H. 8. cap. 5. 10.  
To whom and by  
whom this Com-  
mission shall be  
granted.  
*f* 23 H. 8. cap. 5.  
*g* 13 Eliz. cap. 9.  
*h* 23 H. 8. cap. 5.  
Lib. Intr. Coke  
292, 293.



Commissioners of Sewers to reform the great hurt and nuisance by reason of the sand rising out of the Sea, and driven to land by storms and winds. A special provision is there made for the County of Glamorgan.

3 Jac. cap. 14.

\* *Nota*, an excellent exposition of the Statute of 23 H. 8. by this Parliament of 3 Jac.

It is adjudged by Act of Parliament Anno 3 Jacobis. Regis cap. 14. That Walls, Ditches, Banks, Gutters, Sewers, Gates, Causeys, Bridges, and Watercourses in or about the City of London, \* where no passage for Boats is used, nor the water therein doth usually ebb or flow: which Walls, Ditches, Banks, Gutters, Sewers, and other the premises, do fall into the River of Thames, are not under the survey, correction and amendment of the Commissioners of Sewers nor of the Statutes made for Sewers in An. 23 H. 8. or of any other Statute of Sewers, as it is rehearsed by full consent of Parliament: and therefore provision is made that those Walls, Ditches, Banks, Gutters, Sewers, and other the premises, shall be subject to the Commission of Sewers.

13 Eliz. cap. 9.  
How long the Commission shall endure.

13 Eliz. cap. 9.  
The Laws written in Parchment, and Indented, &c. Without Certificate or Royal assent.

6. That a Commission of Sewers shall continue ten years, unless it be repealed or determined by reason of any new Commission, or by Superseas.

7. That Laws, Ordinances and Constitutions made or to be made by force of any such Commission, and written in Parchment indented under the Seals of the said Commissioners or six of them, whereof one part shall remain with the Clerk, &c. and the other part in such place as six of the said Commissioners shall appoint, shall without any Certificate, and without the Royal assent stand and continue in full force notwithstanding any determination of any such Commission by Superseas, until the same be altered by the Commissioners of Sewers after to be assigned, &c.

Determination by expiration.

Justices of Peace.

8. And if any such Commission be determined by expiration of ten years next ensuing the Teste thereof; then such Laws, &c. so indented and sealed, &c. shall continue for one whole year. And that the Justices of peace or six of them, whereof one to be of the Quorum, shall have authority during that year to execute the said Laws, &c.

9. That by the granting of a new Commission within that year, the power of the Justices of Peace to cease.

*Nota*, no certificate or return of the Commissions or of any the Ordinances, Laws, or doings.

10. The said Commissioners shall not be compelled to make any Certificate, or return the said Commissions, or of any of their Ordinances, Laws, or doings, by authority of the said Commissions.

11. See also an alteration by the Statute of 13 Eliz. concerning fees.

12. Lastly, this is certain, that neither the Commissioners of Sewers, nor any other, have such an absolute authority, but that their proceedings are bound by Law.

Regist. 126, 127.  
F. N. B. 113, 114.

Vide the ancient Commission of Sewers by the Common Law in the Register, and F. N. B.

Rot. Parl. 2 H. 6.  
Du. 57.

A general Commission of Sewers enacted by authority of Parliament, not printed.

6 H. 6. cap. 5.  
Stat. 25 E. 3. ca. 4.  
45 E. 3. c. 2.

A general Commission of Sewers enacted by Parliament, and in print. But the Commission by the Statute of 23 H. 8. standeth now in force. And yet by diligent perusal of the former, and by advised comparing of them with the latter, it will manifest wherein the former defects were, and how continually by the latter they were supplied and amended, and give a great light for the true understanding of that which now standeth.

Hil. 13 E. 2. coram Reg. Rot. 55. Norf. Pasc. 44 E. 3. coram Rege Rot. 2 Mid. 4 19 E. 3. tit. bar. 279.  
b 2 E. 3. fol. 26.  
c The Court of Sewers of Rumney Marsh.

See Hil. 13 E. 3. coram Rege. Leges & consuetudines approbatæ pro reparatione murorum maritimorum & mundatione Fossatarum & Suerarum in paludibus quæ hic exprimuntur per commissionem Regis ad hoc faciendum in Merishland.

a A particular Commission granted to S. J. de Sutton, & Sir Rob. de Scrope.

b A Commission concerning the River of Lee.

c Rumney Marsh in the County of Kent containing 24000 acres, is at this day, and long time hath been governed by certain ancient and equal Laws of Sewers made by a venerable Justice Henry de Bathe, in the Reign of H. 3. from which Laws not only other parts in Kent, but all England receive light and direction: For example, The said general Act of 23 H. 8. c. 5. in the clause which giveth



giveth power to the Commissioners to make Statutes, Ordinances, and provisions, &c. necessary and behoveful after the Laws and Customs of Rumney Marsh in the County of Kent, or otherwise by any ways or means, &c.

Both the Town and Marsh of Rumney took their name of one Robert Rumney. This Robert (as it appeareth by the Book of Domesday) held this Town of Odo Bishop of Baieux, wherein he had 13 Wurgesses, who for their service at the Sea were discharged of all actions and customs of charge, except felony, breach of the peace and forestalling.

See before in the Chapters of the Courts of London, &c. the jurisdiction that the Lord Mayor hath in the River of Thames.

## C A P. LXIII.

### The Court of the Commissioners upon the Statutes of Bankrupts.

**W**E have fetched as well the name as the wickedness of Bankrupts from forrain Nations: For Banque in the French is mensa, and a Banquer or Eschanger is \* *mensarius*, and route is a sign or mark, as we say, a Cart rout is the sign or mark where the Cart hath gone: metaphorically it is taken for him that hath wasted his estate, and removed his Banque, so as there is left but a mention thereof. Some say it should be derived from Banque and rumpue, as he that hath broken his Banque or state.

In former times as the name of a Bankrupt, so was the offence it self (as hath been said) a stranger to an Englishman, who of all other Nations was freest of Bankruptcy. And the first Statute that we find against this crime, was indeed made against strangers, viz. against Lombards, who after they had made Obligations to their Creditors, suddenly escaped out of the Realm without any agreement made with their Creditors. \* It was therefore enacted, that if any Merchant of the Company knowledge himself bound in that manner, that then the Company shall answer the debt; so that another Merchant which is not of the Company shall not be thereby grieved nor impeached: neither do we find either any complaint in Parliament, or Act of Parliament made against any English Bankrupt until the 34 year of H.8. when the English Merchant had rioted in three kinds of costliness, viz. costly building, costly diet, and costly apparel, accompanied with neglect of his Trade and Servants, and thereby consumed his wealth.

He is called in Latin \* *Decoctor*, à *Decoquendo*, for consuming of his estate in riotous and delicate living. The said Act of 34 H.8. is altered by the Statutes of 13 Eliz. cap. 7. 1 Jac. cap. 15. & 21 Jacobi cap. 19.

And it is to be observed, that all the aforesaid Statutes and Laws made against Bankrupts, and for relief of Creditors, shall be in all things largely and beneficially construed, &c. for the aid, help and relief of the Creditors.

A Bankrupt is described by the Statute of 13 Eliz. cap. 7. and 1 Jac. cap. 15. but more effectually by the Statute of 21 Jac. cap. 19. So as by all these three he is perfectly described. And the Commission doth extend to all and every of the said descriptions and articles thereof.

<sup>a</sup> The authority of the Commissioners is by Commission under the Great seal; their jurisdiction and power is by force of the said Acts of Parliament which ought to be pursued, <sup>b</sup> or else they are subject to the action of the party grieved, for he hath no other remedy. <sup>c</sup> The Lord Chancellor or Lord Keeper upon Complaint made unto him in writing hath authority to grant the said Commission.

\* The derivation and signification of Bankrupt. Cicero pro Flaminio: *In qua civitate nummus moveri nullus potest sine quinque; praetoribus, 3 praetoribus, & quinque; mensariis.*

25 E.3. Stat. 3. cap. 23. Parl. 50 E.3. nu. 160. against Lombards.

\* 51 E.3. nu. 51. Vid. 50 E.3. ca. 6. & 2 R.2. cap. 3. Stat. 2. against frauds generally. 34 H.8. cap. 4.

Cicero in Catilinam: *Exercitum collectum ex rusticis, mendiculis, & decoctoribus.*

The description of a Bankrupt. The authority of the Commissioners and their jurisdiction.

<sup>b</sup> Lib. 8. f. 21. Int' Curr & Delabar. <sup>c</sup> 13 Eliz. cap. 7. who may grant the Commission.



\* Three qualities of every of these Commissioners.

General pleading.  
1 Jac. cap. 15.  
21 Jac. cap. 19.

\* Lib. 2. fo. 25, 26. Cullamors case.  
Lib. 8. fo. 98. Baspoles case.  
Ib. fol. 121. Int' Cutt & Delabar.

The Law hath provided that these Commissioners ought to have \* 3 qualities, viz. wisdom, honesty and discretion; which if it be observed, it is the best means for the due execution of the said Statute, and the life of these Laws doth consist in the due execution thereof: and for such Commissioners if any Action shall be brought against them, &c. for doing of any thing by force of the said Statutes, they may plead generally, and not to be driven to any special pleading.

They have power to examine the offender upon oath, and after he be declared a Bankrupt, to examine his wife upon oath, and to examine witnesses also upon oath. See the Statute. And they have power to break any the Houses, Chambers, Warehouses, &c. Trunks and Chests of such offenders. See the other parts of this Act of 21 Jacobi, which are plainly and effectually expressed, and need not here to be recited.

For the exposition of the said Statute of 13 Eliz. \* See in my Reports lib. 2. fo. 25, 26. Cullamors case. Lib. 8. fo. 98. in Baspoles case, & ibid. fo. 121. inter Cutt & Delabar.

## CAP. LXIV.

### Commissioners for examination of Witnesses.

INASMUCH as the Court of Star-Chamber, the Chancery in cases of equity, the Exchequer Chamber in cases of equity, the Court of Wards, and the Duchy of Lancaster do proceed upon witnesses examined before Commissioners, or in Court before the Examiners, it shall be necessary (as a matter of great importance) to say somewhat of the power, authority, and duty of the said Commissioners and Examiners, and incidently of witnesses.

See li. 9. fo. 70, 71. Peacocks case, for this and some of the cases following Lib. 9. ubi sup.

The Commissioners, albeit named by the parties reciprocally, ought to stand indifferent, and do their uttermost endeavour to find out by due examination the whole truth, and to suppress no part thereof; for their authority is to that end merely and wholly from the King by force of his Commission.

Neither Commissioner nor Examiner are strictly bound to the letter of the Interrogatory, but ought to explain every other matter or thing which riseth necessarily thereupon, for manifestation of the whole truth concerning the matter in question.

Lib. 9. ubi supra.

Neither Commissioner nor Examiner ought to discover to either of the parties or to any other, any of the depositions or any part of them, which they have taken before publication be granted.

Lib. 9. ubi supra.

Neither Commissioner nor Examiner after the Examination begun, ought to confer with either party touching the examination, or take new instructions concerning the same.

Aug. Serm. 28. de verbis Apostoli. *Furare est jus veritatis Deo reddere.* AZO. *Jusjurandum est affirmatio vel negatio, religione adhibita.* See the third part of the Institutes cap. Perjury.

INASMUCH as the witness by his oath, which is so sacred, as he calleth Almighty God (who is truth it self and cannot be deceived, and hath knowledge of the secrets of the heart) to witness that which he shall depose; it is the duty both of the Commissioner and Examiner gravely, temperately, and leisurely to take the deposition of the witness, without any menace, disturbance, or interruption of them in hinderance of the truth, which are grievously to be punished. And after the depositions taken, the Commissioners and Examiners ought to read the same distinctly to the witnesses, and suffer them to explain themselves for the manifestation of the whole truth. And it is safe for the Commissioner and Examiner that the witnesses subscribe their names or marks to the Paper-book, but they must be certified in Parchment.

And

And albeit the Commissioners be not equal in state or degree, yet are they all of equal power and authority: for, as it hath been said of old, that there might be priority, but no superiority amongst Commissioners.

Interrogatories ought to be single and plain, pertinent to the matter in question, and in no sort captious, leading, or directory.

In some cases the Courts of the Common Law do judge upon witnesses, but they must ever give their testimony viva voce: \* as in dower, if the issue be whether the husband be alive or no, &c.

Witness is derived of the Saxon Verb Weten. i. Scire, Quia de quibus sciunt testari debent, & \* omne sacramentum debet esse certæ scientiæ. In Latin Testis à testando; & testari est testimonium perhibere: unde Regula juris, Plus valet unus oculatus testis, quam auriti decem: Testis de visu præponderat aliis.

a An Oath ought to be accompanied with the fear of God, and service of God for advancement of truth, Dominum Deum tuum timebis, & illi soli servies, & per nomen illius jurabis.

Bracton saith that an Alien born cannot be a witness: which is to be understood of an Alien Infidel: b for the Bishop of Ross being a Scot born, was admitted to be a witness, and sworn Anno 14 Eliz. in the case of the Duke of Norfolk by the opinion of the Justices assistants. c Testis falsus non erit impunitus.

Nocte dieque suum gestat sub pectore testem:

His Conscience always gnawing and vexing him. d Vox simplex nec probationem facit, nec præsumptionem inducit.

e Testium numerus si non adjicitur, duo sufficiunt.

Jurato creditur in judicio.

f Testibus deponentibus in pari numero dignioribus est credendum.

g Testmoignes ne poent testefie le negative, mes l'affirmative.

h Allegans contraria non est audiendus, verum vero consentiens est falsum nec vero nec falso.

Juramentum est indivisibile, & non est admittendum in parte verum, & in parte falsum.

i Allegans suam turpitudinem non est audiendus.

Judex non potest esse testis in propria causa.

Jusjurandum inter alios fact' nec nocere, nec prodesse debet.

Facultas probationum non est angustanda.

De crimine in Lupanari commissio, lupanares testes esse possunt.

Qui prodit in scenam mercedis ergo, infamis est.

Witnesses ought to come to be deposed untaught, and without instruction, and should with the victory to the party that right hath, and that Justice should be administered: and should say from his heart, Non sum doctus, nec instructus, nec curo de victoria, modo ministretur Justitia. See Britton 134, 135.

\* 8 H.6 13. 2 E.2. trial 46. &c.

Dier 2 Eliz. 125.

13 Eliz. 306.

¶ Of witnesses.

Additions to the

1 part of the Inst.

Sect. 1. fo. 6.

And to the third

part of the Instit.

utes cap. Perjury.

\* 12 Ass. 12.

23 Ass. n.

11 Ass. p. 19.

a Deut. 6. 13.

b 16 Januarii

14 Eliz.

c Prov. 19.

d Brañ. lib. 9.

fo. 400. b.

2 H.7. Kelw. 96. a. b.

e Brañ. lib. 5. 359.

f Vid. 2 E.3.

trial 45.

g F.N.B. 106, 107.

h 16 E.4. 10. a.

i Trin. 13 E. 1. in

Com. Banco.

Rich. de Rayn-

hams case.

Histriones Merce-

narii.



## CAP. LXV.

*Curia cursus Aquæ apud Gravesend.*

**O**f this Court, and others like, which are in private, we intend not to treat, for that the labour herein were infinite, and serveth nothing for the publick, whereat our principal aim hath been.

## CAP. LXVI.

*The Kings Swanheard.*

Rot. Pat. 16 R. 2.

part 1. m. 39.

\* Tr. 33 E. 1. Essex

coram rege.

Rot 124.

7 H 6. acc.

¶ *The Kings Alne-*  
*ger.*

4 Rot. Pat. 14 E. 1.

Tho. Darlington

*Militi.*

This appeareth

also by the Sta-

tutes themselves,

25 E. 3. cap. 1.

Stat. 4.

27 E. 3. Stat. 1.

cap. 4. 3 R. 2. cap.

17 R. 2. cap. 2. & 5. 1 H. 4. cap. 13. 11 H. 4. 6. 13 H. 4. 4. 11 H. 6. 1. 31 H. 6. 5. 4 E. 4. 1. 8 E. 4. 1.

R. 3. Rot. Claus. 17 R. 2. m. 14. ¶ The derivation of Alneger.

**W**hat authority the Kings Swanheard hath, being of ancient time by his Office Magister deductus Cygnorum, you may read Rot. Patentium Anno 11 H. 4. part 1. m. 14. Rot. Pat. 30 E. 3. part 1. m. 20. and Lib. 7. fo. 15. &c. Le case de Swannes; but Court he hath not: No Fowl can be a \* Gray but a Swan.

So likewise there is an ancient Officer of the Kings Alneger of the Kings gift being before any Statute: As taking one example for many. <sup>a</sup> In 14 E. 1. Sir Thomas Darlington was by the Kings Letters Patents Alneger of Broad Cloth, and had a fee of the King for the exercise of his Office; For the fee that he had of the Subject was (as it ought to be) by Act of Parliament. 27 E. 3. St. 1. cap. 4. <sup>b</sup> Alneger of Aulne in French, and that of ulna, ulnator. See before concerning the Alnaging of new Draperies, Cap. Of the High Court of Parliament, pag. 31.

## CAP. LXVII

*The Wardens Courts in the East, West, and middle  
Marches adjoyning to Scotland.*

23 H.8.c.16. 31 H.8.  
c.3. 8 E.4. c.2.  
22 E.4. cap.8.

**T**hey proceeded according to the Law called the March Law, or Borders Law, but their jurisdiction was increased by Act of Parliament. The limits of their jurisdiction was within the Marches, which were confined to the Counties of Northumberland, Cumberland, Westmerland, and the Town of Newcastle upon Tyne in the County of York.

For the word [ Marches, ] See before Cap. President and Council of Wales.

But since King James was Monarch of both Kingdoms, the batable grounds on both sides are become quiet, and so peaceable, as all the said Courts in the East, West, and middle Marches are vanished, and hostile Laws on both sides by authority of Parliament in either of the Kingdoms repealed. See the said Statute of 4 Jacobi. See the First part of the Institutes, Sect. 3.



## CAP. LXVIII.

### Of Callais, or Callis, Calletum.

Rot.Par. 50 E.3.  
nu.211,212.

6 H.6. nu.41.

See the Statute of  
27 H.8. concerning  
good Laws and  
orders for Callis  
and the Marches  
thereof, and 1 H.7  
cap.3.

b 21 H. 7. 33.

11 H. 8. Kelw.

202. b. Par.3 R.2.  
nu.48.

c Pat.15 E.3.

2 part. Parl.9 R.2.  
nu.4.

d 42 E.3. cap.10.  
Lib.7. in Calvins  
case.

e Rot.Parl. 9 R. 2.  
nu.4.

9 H.5. Stat.2. ca.5.

f 1 R.2. nu.37.

g Parl. 50 E.3.

nu.209.

**T**his strong Port Town, the famous and flourishing Mart, Staple, and vent of English commodities was holden and kept by the space of 211 years by 11 several Kings, viz. E.3. R.2. H.4. H.5. H.6. E.4. E.5. R.3. H.7. H.8. E.6. and holden and lost by King Philip and Mary the first Queen regnant of this Realm, the Lord Wentworth then Deputy there.

It was governed by Englishmen and by English Laws, some particular customs excepted. *b* And of a judgment given there a Writ of Error did lie returnable into the Kings Bench. *c* Before the Staple at Callais, it was kept at Bruges in Flanders.

*d* The Children born there were inheritable in England and so declared by authority of Parliament.

*e* And there the King had his Mint in such manner as in the Tower of London. Certain it is that riches followed the Staple wheresoever it was kept. *f* And it could not be appointed in any place but by Act of Parliament.

*g* The Staple being at Callais, upon all rodes forth of the Town by the Captain, the Mayor of the Staple furnished him forth of Merchants and their servants to the number of 100 Bill-men, and 200 Archers without any wages. And yet it appeareth in the Parliament Roll of 2 R.2. nu.15. that Callais cost the King yearly twenty thousand pounds.

See the Parliament Roll of 50 E.3. nu.211, 212. for the Mayors Courts, &c. and Liberties, and Franchises, &c. there. Many Acts of Parliament have been made concerning this Town, and the Staple therein, which need not here to be recited, only we thought it not good totally to pretermitt it, because the Kings right remains to it, and it may hereafter be restored (which is so much desired) to the right owner.

## C A P. LXIX.

*Of the Isle of Man, Insula Euboniæ, modo Mannæ,  
and of the Law and Jurisdiction of the same.*

**T**his Isle hath been an ancient Kingdom, as it appeareth in Lib. 7. in Calvins case, which need not here to be recited. And yet we find it not granted or conveyed by the name of a Kingdom, sed per nomen Insulæ, &c. cum patronatu Episcopatus. He hath the Patronage of the Bishoprick of Sodor, which is a visible mark of a Kingdom; albeit of ancient time the Archbishop of Canterbury was Patron of the Bishoprick of \* Rochester, and the Earl of Glouc' of the Bishoprick of Landaf. Vide Lib. M.S. in Recept. Scaccarii f. 166. & Lib. Parliam. in Turri London Temps E.1. fol. 19 21.

Walf. pag. 389.  
Lib. 7. fol. 21. in  
Calvins case.

\* Rot. Cart. 16 Jo-  
han. m. 6.

William le Scrope emit de Domino Willielmo de Monte acuto Insulam Euboniæ, (i. Mannæ:) Est nempe jus ipsius Insulæ ut quisquis illius sit Dominus Rex vocetur, cui etiam fas est Corôna aurea coronari.

Anno Dom. 1393.  
Walf. An. 17 R. 2.

The Lord Scrope forfeited the same to H. 4. for High Treason. King H. 4. granted the same to Henry Earl of Northumberland in these words, Rex, &c. Dei gratia nostra speciali dedimus & concessimus Henrico Comiti Northumbriæ Insulam, Castrum, \* Pelam, & Dominium de Man, ac omnia insulas & Dominia eidem Insulæ pertinen' quæ fuer' Willielmi le Scrope Chivalier defuncti, quem in vita sua Conquestati fuimus, & ipsum sic Conquestatum decrevimus, & quæ ratione Conquestus illius tanquam Conquestata cepimus in manum nostram. Quæ quidem Conquestum & Decretum in præsentî Parlamento nostro de assensu Dominorum Temporalium in eodem Parlamento existentium quoad personam præfati Willielmi, ac omnia, terras, tenementa, bona, & catalla sua tam infra regnum nostrum quam extra ad supplicationem Communitatis Regni nostri affirmata existunt, &c. Habenda & tenenda eidem Comiti & hæredibus suis, &c. per servic' portandi diebus Coronationis nostræ & hæredum nostrorum ad sinistrum humerum nostrum & sinistros humeros hæredum nostrorum per seipsum aut sufficientem & honorificum deputatum suum illum gladium nudum quo cincti eramus quando in parte de Holdernes applicuimus, vocatum *Lancaster Sword*, durante processione & toto tempore solemnizationis Coronationis supradictæ.

Corona aurea.  
Of the qualty of  
him, See Walf.  
Ubi supra.  
Rot. Pat. 1 H. 4.  
Rot. 2. Bundello 2.  
parte 5. m. 36.  
\* A Pele or Pile, a  
fortress in a small  
Isle belonging to  
the Isle of Man.  
Nota, the title of  
the King by Con-  
quest is affirmed  
by Parliament.

In this little Kingdom there are 2 Castles, 17 Parishes, 4 Market Towns, and many Villages, and in that Isle there is a Bishoprick, as hereafter shall be shewed.

Anno 5 H. 4. the said Henry Earl of Northumberland was attainted of treason, and by Act of Parliament 1 Martii, 7 H. 4. it is enacted that the King should have the forfeiture of all his lands and tenements. And afterwards in 7 H. 4. the King granted the Isle of Man una cum Patronatu Episcopatus to Sir John Stanley for life: and after in the same year he granted the same Isle una cum Patronatu Episcopatus, to the said Sir Joh. Stanly and to his heirs; Tenend' de Rege hæredibus & successoribus suis per homagium ligeum: Reddendo nobis duos Falcones semel tantum, viz. immediate post homagium hujusmodi fact': Et reddendo hæredibus nostris regibus Angliæ duos Falcones diebus Coronationis eorundem hæredum nostrorum pro omnibus aliis serviciis, consuetudinibus, & demandis, adeo libere, plene & integre sicut Willielmus Scrope Chivalier vel aliquis alius, &c.

Rot. Pat. 7 H. 4.  
parte 2. m. 18.  
Cum patronatu  
Episcopatus.

This Sir John Stanley had issue Sir John Stanley Knight, who had issue Sir Henry Stanley Lord Chamberlain to King H. 6. who created him Lord Stanley, who had issue George, who had issue Thomas, whom King H. 7. created Earl



Carl of Derby to him and the heirs males of his body, who had issue Thomas, who had issue Edw. who had issue Henry, who had issue Ferdinando and William. Ferdinando had issue Anne, Frances and Elizabeth, and died without issue male: And between these daughters being heirs general, and William Carl of Derby being heir male, question was moved concerning the title of the Isle of Man: which by Queen Elizabeth was referred to the Lord Keeper Egerton, and to divers Lords of the Council, and to Popham Chief Justice of England, Anderson Chief Justice of the Common Pleas, and Peryam Chief Baron; who Trin. 40 Eliz. upon hearing of the Council of both sides, and mature deliberation, resolved these five points: 1. That the Isle of Man was an ancient Kingdom of it self, and no part of the Kingdom of England. 2. They affirmed a case reported by Kelw. Anno 14 H.8. to be Law, viz. Mich. 14 H.8. an office was found that Thomas Carl of Derby at the time of his death was seised of the Isle of Man in fee; whereupon the Countess his wife, by her Council, moved to have her Dower in the Chancery: but it was resolved by Brudnell, Brook and Fitzh. Justices, and all the Kings Council, that the office was mæly void, because the Isle of Man was no part of the Realm of England, nor was governed by the Law of this Land, but was like to Tourny in Normandy, or Gascoign in France, when they were in the King of Englands hands, which were mæly out of the power of the Chancery, which was the place to endow the widow of the King, &c. 3. It was resolved by them that the Statute of W.2. De donis conditionalibus, nor of 27 H.8. of Uses, nor the Statutes of 32 or 34 H.8. of Wills, nor any other general Act of Parliament did extend to the Isle of Man for the cause aforesaid, but by special name an Act of Parliament may extend to it: 3. It was resolved that seeing no office could be found to entitle the King to the forfeiture of Treason, that the King might grant by a Commission under the Great Seal to seise the same into the Kings hands, &c. which being done and returned of Record is sufficient to bring it into the Kings seisin and possession, and into charge, &c. 4. That the King might grant the same under the Great Seal, because he cannot grant it in any other manner. And herewith agreeth divers grants under the Great Seal of this Isle, viz. 4 Junii, 18 E.1. Rex E.1. concessit Waltero de Huntercombe, &c. Rex E.2. concessit Petro de Gæveston, &c. 1 Maii, 5. E.2. Gilberto Magaskill, and in the same year granted Henrico de Bello monte Insulam prædictam cum omni Dominio & Justitia regali pro termino vitæ, &c. 5. It was resolved that a fee simple in this Isle passing by the Letters Patents to Sir John Stanley and his heirs, is descendible to his heirs according to the course of the Common Law, for the grant it self by Letters Patents is warranted by the Common Law in this case: and therefore if there be no other impediment, the Isle in this case shall descend to the heirs general, and not to the heir male; as the grand Seignories and Connots in Wales were impleadable at the Common Law, but the lands holden of them by the customs of Wales, &c. Which resolutions we have thought good to report, because they are the best directions that we have found, both in these, and for the like cases.

Vide 33 H.8.c.6.  
a proviso for the  
subjects of the Isle  
of Man. 14 E.1.c.5.  
a In Turri Lond.  
3 Junii 6 H.4.  
such a Commission  
under the  
Great Seal was  
granted to Sir  
John Stanley, and  
William Stanley,  
&c. to seise, &c.  
In this very case.  
b In cur. Rot. Pat.  
18 E.1. and Anno  
5 E.2.

Rot. Pat. 2 Apr.  
6 E.2.

By these Letters Patents it appeareth, that Simon Montacute had intruded into and occupied the said Isle in nostri exheredationem, for which he was attached to answer the same in the Kings Bench at the suit of the King, but what proceeded thereupon we yet find not.

\* A Dema a Saxon  
word for a Judge.  
Giraldus: sunt duo  
Judices in Insula  
Mannia (olim E-  
wania nuncupata)  
qui de litibus ibi-  
dem emergentibus  
cognoscunt.

But now let us come to their Laws, and Jurisdiction of this Isle, the like whereof we find not in any place. Their Judges they call \* Deemsters, which they chose out of themselves. All controversies they determine without process, pleading, writing, or any charge or expence at all. If any case be ambiguous and of greater weight, it is referred to 12, which they call Claves Insulæ, the keys of the Island. They have Coroners (quos Annuos vocant) who supply the office of a Sheriff.

But albeit this be so, yet when this Isle was in the Kings hands, if any injustice or injuries were done to any of his subjects there, the King might grant

a Commission for redress thereof: the like whereof we find, Rot.Pat. Anno 20 E.1. in these words; Rex dilectis & fidelibus suis Nicholao de Segrave seniori, Osberto de Spaldington, & Johanni de Suthewell, Salutem. Sciatis quod assignavimus vos Justiciarios nostros ad querelas omnium & singulorum de Insula de Man se conqueri volentium de quibuscunque transgressionibus, & injuriis eis per quoscunque tam ballivos & ministros nostros quam alios in prædicta Insula illatis audiend' & terminand', & ad plenam & celerem Justitiam partibus inde faciend' secundum legem & consuetudinem partium illarum. Et ideo vobis mandamus, quod ad certos dies & loca quos, &c. in Insula prædicta querelas, &c. audiatis & terminetis in forma prædicta facturi, &c. Salvis, &c. Mandavimus enim Custodi nostro Insulae prædictæ; quod ad certos, &c. in Insula prædicta venire fac' coram vobis tot & tales, &c. In cujus, &c. Tette Rege apud Berewick, 15 die Julii.

So as albeit the Kings Writ runneth not into the Isle of Man, yet the Kings Commission extendeth thither for redress of injustice and wrong: but the Commissioners must proceed according to Law and Justice of the Isle. They have peculiar Laws or Customs; for example: If a man steal an Horse or an Ox, it is no Felony, for the offender cannot \* hide them, but if he steal a Capon or a Pigge he shall be hanged, &c. Upon the sale of a Horse or any contract for any other thing, they make the stipulation perfect, per traditionem stipulae. Nota, the true derivation of stipulation. And as they have peculiar Laws, so have they a proper Language.

This Isle hath a Bishop instituted by Gregory the Fourth Bishop of Rome, Episcopus Sobo, and he is under the Archbishop of York, but hath neither place nor voice in the Parliament of England. In hac Insula Judex Ecclesiasticus citat, definit, & infra Octo dies parent, aut carceri intruduntur. renfis.

The Inhabitants of this Isle are Religious, Industrious, and true people without begging or stealing.

In the Margent, thus, De querelis hominum Insulae de Man. audiend' & terminand'.

Nota, secundum legem & consuetudinem Insulae de Man.

\* They have no Woods.  
12 H.8. fo.5.a.



## CAP. LXX.

*Of the Isles of Jersey alias Gearsey, olim Cæsarea,  
and Garnsey, olim Saruia, and of the Law, and  
Jurisdiction of the same.*

Jersey hath 12  
Parishes.  
Garnsey 10.  
Pasch. 17 E.2.

**B**oth these Isles did of ancient time belong to the Dutchy of Normandy: but when King H.1. had overthrowen his elder Brother Robert Duke of Normandy, he did unite to the Kingdom of England perpetually the Dutchy of Normandy together with these Isles: and albeit King John lost the possession of Normandy, and King H.3. took money for it, yet the Inhabitants of these Isles with great constancy remained, and so to this day do remain true and faithful to the Crown of England; And the possessions of these Islands being parcel of the Dutchy of Normandy, are a good seisin for the King of England of the whole Dutchy.

Concerning the Judicature and Customs of these Isles whereto we principally aim, it appeareth by the Kings Records in the Tower. Quod Rex Johannes constituit 12 Coronatores juratos ad Placita & Jura ad Coronam spectantia custodienda, & concessit pro securitate Insularum, quod Ballivus de cætero per visum Coronatorum poterat placitare sine brevi de nova disseisina facta infra annum, de morte antecessorum infra annum, de dote similiter infra annum. And for the most part they proceed according to the Customs of Normandy.

Coram rege Rot.  
67. Jersey.  
2 E.3. fo.5.b.  
The Abbot of the  
Mount of S. Mich.  
case.

Drugo Barentyne dicit quod 40. An est tempus extra memoriam secundum consuetudinem partium illarum.

King E. 3. assigned Hen. de Guldeford and others, Justices Errants in the Isles of Garnsey and C. by his Commission to enquire if he had right in the Mannor of C. &c. and there it appeareth, that they demanded advise of the men of the Isles learned in their customs, who informed them of the customs of the Isles, which the Justices followed, and there it appeareth that if the information was against the Laws of the Isles, they may be holpen by the Laws of the same. See the Book.

Rot. Claus. 9 E.3.  
& 25 E.3.  
Mich. 41 E.3.  
Coram rege Rot.  
109. Jersey in  
placito transgres.  
& Secundum cons.  
Insulæ præd.  
b Mic. 6 H.8. 172.b.  
Kelw. to the Bay-  
liff and Jurates of  
Jersey Lib. 7. fo.  
20, 21. in Calvins  
case.  
c Regist. fo. 22.  
d These little Isles  
of Serk and Aure-  
ney do lye between  
and near the other  
and were parcel  
also of the Dutchy  
of Normandy.

Quod in Customis & aliis rebus tanquam indigenæ & non aliegenæ tractentur, &c. Quod juratores in Insula, &c. non protrahunt judicia sua ultra unius anni spacium.

An Action of trespass was brought by A. in the Kings Bench for a trespass done by B. in the Isle of Jersey: whereupon in the Record this Entry was made. Et quia negotium prædictum in Curia hic terminari non potest, eo quod Juratores Insulæ præd' coram Justiciariis hic venire non possunt, nec de jure debent, nec aliqua negotia de Insula prædicta emergentia non debent terminari nisi secundum consuetudinem Insulæ prædictæ. Ideo totum recordum negotii mittatur in Cancellariam domini regis, ut inde fiat commissio domini regis, cui vel quibus domino regi placuerit ad negotium prædictum in Insula prædicta audiend' & terminand' secundum consuetudinem Insulæ prædictæ.

By this it appeareth, that albeit the Kings Writ runneth not into these Isles, yet his Commission under the Great Seal doth, but the Commissioners must judge according to the Laws and Custom of these Isles.

De Attornato generali in Insulis de Gernsey, Jersey, d Serk & Aureney fac' virtute Brevis domini Regis. Rex omnibus Ballivis & fidelibus suis in Insulis de Gernsey, Jersey, Serk & Aureney ad quos, &c. Sciatis, &c. in quibuscunque curiis nostris Insularum earundem, &c. post adventum ipsius A. in Insul' prædict' si contingat

contingat ipsum A. interim venire ad partes illas. Teste, &c. They are not bound vid. 33 H. 8. c. 6.  
by our Acts of Parliament, unless they be specially named.

The King hath granted to the men of the Isles of Gernsey, Serk and Au- Rot. Par. 14 R. 2.  
reney, that they during the space of 8 years shall be free of all manner of Tolls, nu. 30.  
Gracions and Customs within the Realm as his Liegemen and Denizens.

Insulani petunt, quia sunt in mari constituti, quod non ulterius extra Insulas  
prædictas prosequerentur ad eorum periculum, & non facile possunt sequi Curias  
Regis in Anglia.

For the Isles of Jersey and Garnsey, see Mich. 5 E. 3. coram Rege Rot. 46.  
Pasch. 17 E. 2. Coram Rege Rot. 67.

Within Garnsey there are ten Parishes, one Market Town, being the  
Port or Haven called S. Peters Port by the Castle of Cornet. Jersey hath  
S. Albanes and Hillary two little Islands adjacent, it hath twelve Parishes,  
and four Castles.

## C A P. LXXI.

### De Insula Vectis or Vecta, of the Isle of Wight.

**O**F this we shall not need to say any thing, because it is and ever hath been  
part of Hamshire, and ever governed by the Laws of England, as the  
other Shires have been : but seeing we have named it, we will relate some  
things which we have observed.

First, there hath been an ancient Baron, de Insula, of the Isle, or Lisle, and  
of latter times there was a Viscount of the same, which is to be understood of  
the Isle of Wight : for in the Parliament Rolls of E. 2. I find him called de  
Insula vecta.

Secondly, Henry de Beauchamp Earl of Warwick, for the singular favour  
which King Henry the Sixth bare to him, crowned him King of Wight : but  
we could never find any Letters Patents of this creation, because (as some do  
hold) the King could not by Law create him a King within his own Kingdom,  
because there cannot be two Kings of the same place in one Kingdom : And  
after the same King named him Primus Comes totius Angliæ. But of this it is Camden:  
truly said : Cum illo novus hic & insolitus titulus omnino evanuit.

See the Statute of 4 H. 7. cap. 16. against taking of Farms within this Isle,  
and the power of Judicature given thereby to the Captain of this Isle, or his  
Lieutenant in a certain case.



## C A P. LXXII.

*Of the Island called Lindesfarne or Leidisfarne, situate by the River Lied, having on the South Eastward the Island of Farn, and is called the Holy Island.*

**I**t hath one Castle, one Church, and one Parish, and a safe Haven defended by a Block-house.

It is called the holy Island, for that it being a solitary place, holy men in times past retired themselves thither for their better, and more devout service of God. It was of ancient time a Bishops seat, which was after translated to Duresme, and is governed by the Law of England.

*Farne Isle.*

For that this Isle of Farne hath neither Church nor Town, but only a Castle, I pass it (and other like Isles) over.

## C A P. LXXIII.

*Of the Forrests, and the Jurisdiction of the Courts  
of the Forrest.*

**F**OR the word Foresta, see Domesday in Glouc' & alibi.

For the derivation and description thereof, and some other things concerning the same; See the First part of the Institutes.

In Latin it is called Saltus or Sylva. And so in Domesday, Sylva est defens', scilicet, in Foresta Regis.

A Forrest doth consist of 8. things, viz. of Soil, Covert, Laws, Courts, Judges, Officers, Game, and certain Bounds.

\* Foresta est nomen collectivum, and by the grant thereof the soil, game, and a free Chase doth pass.

And seeing we are to treat of matters of game, and hunting; Let us (to the end we may proceed the more cheerfully) recreate our selves with the excellent description of Didoes Doe of the Forrest wounded with a deadly arrow stuck in her, and not impertinent to our purpose.

Uritur infœlix Dido, totaque vagatur  
Urbe furens, qualis coniecta Cerva sagitta,  
Quam procul incautam nemora inter Cressia fixit  
Pastor agens telis, liquitque volatile ferrum  
Inscius: illa fuga sylvas saltusque peragrat  
Dictæos, \* hæret lateri lethalis arundo.

And in another place using again the word [sylva] & describing a Forrest, saith.

Ibat in antiquam sylvam stabula alta ferarum.

King John the 15 of June in the 18 year of his reign at Kummigsmead, aliàs Kyme meade, between Stanes and Windsor, granted the like Charter, as Carta de Foresta is.

And now let us set down the Courts of the Forrest.

Within every Forrest there are these Courts.

1. The Court of the Attachments or the Woodmote Court, this is to be kept before the Verderors every forty days throughout the year, and thereupon is called the forty day Court. At this Court the Forresters bring in the Attachments de Viridi & Venatione, and the presentment thereof, and the Verderors do receive the same, and inrol them, but this Court can only enquire, and not convict; but it is to be observed, that no man ought to be attached by his body for Tresp' or Menison, unless he be taken with the manner within the Forrest, otherwise the Attachment must be by his goods.

2. The Court of Regard or Survey of Dogs is holden every third year for expedition or lawing of Dogs by that Court.

3. The Court of \* Swanimote is to be holden before the Verderors as Judges by the Steward of the Swanimote thrice in the year, and the Forresters ought to present their Attachments at the next Swanimote Court, and the Freeholders within the Forrest are to appear at the Swanimote to make Enquests and Juries. a And this Court may inquire de superoneratione Forestariorum & aliorum ministrorum Forestæ, & de eorum oppressionibus populo nostro illatis. And this Court may not only enquire, but convict also, but not give judgment.

Ministrorum Forestæ, so called because it is but a preparative for the Justice Seat. \* Ordinat. Forestæ. 34 E. 1. 34 E. 1. cap. 4.

Domesday in Corn.  
Glouc' & alibi.

2 Mar. Dier 169.

1 part of the Inst.

Seet. 378. f. 233. a.

Ockham cap.

Quod Regis Fo-

resta. Bracton

fol. 231. & 316.

Britton fol. 34.

Fleta l. 2. c. 34. 35.

\* 1. part of the

Inst. Seet. 1. f. 5. b.

In the Saxons

time Forrests

were called *walds*;

unde *waldegrave*, i.

*prepositus Forestæ*.

*Virgill.*

*Sylva*, as in

Domesday *Saltus*

*a saltando*, quia *ibi*

*feræ saltant*.

\* Like to an evil

conscience in the

false and furious

Officer of the For-

rest if any such be.

Carta de Foresta

cap. 16.

The Court of At-

tachments.

1 E. 3. cap. 8.

7 R. 2. cap. 4.

Cart. de Forest.  
cap. 6.

The Court of the

Lawing of Dogs.

Cart. de Forest.

c. 8. Of Swani-

mote. 1 E. 3. c. 8.

50 E. 3. Affis' 442.

Swanimote is de-

rived of *Swein*,

that is, *Saxonice*

*Atinister*, & *Mote*,

or *Gemote*, which

is, *Curia*, i. *Curia*



45 E.3. fol.7.

\* We will hereafter shew from whence these several names be derived, and the duty of their several places.

See Domesday Warw. Si vero per mare contra hostes ibat Rex, vel quatuor barneias, vel quatuor libras denariorum ei mittebant.  
a Ordinatio Forestæ. 34 E.1.  
b Regist. 8. b.  
F.N.B.67.c.  
c See the 2 part of the Inst. Magna Carta cap.29.

\* Rot.Par. Anno E.3. nu. In' petitiones.  
d See the 2 part of the Inst. W.1. cap.15. Bracton lib.3. fol. 154.  
Flet. lib.2. c.2.  
e F.N.B. 67.a.  
Register.  
1 E.3. cap.8.

Regist. 80. b.  
43 E.3.30. a. & b.

Consuetud' & Assisa de Foresta.  
Vet. Mag. Cart. parte 2. fol.29.

\* Nota, the entry is, *Presentatum, & convictum per Viridam*.  
f 50 E.3. Ass. 442.  
Ordinat' Forestæ.  
34 E. 1.  
Presentmēt by 36.

For the Jurisdiction of this Court I find a notable case in 45 E.3. in a writ of trespass of false imprisonment brought against J.de W. The Defendant said that he is Forrester in fee of the Forrest, and that at a certain Swanimote it was presented by the \* Forresters, Werderors, Regarders, and Agisters that the Plaintiff had chased and taken Deer within the Forrest, whereupon the Defendant being Forrester in fee came to the Plaintiff, and prayed him to find pledges to answer the same before the Justice in Cir in this County (that is, at the Justice Seat) and that to do the Plaintiff refused, by force whereof he retained him, until he had performed the Statute in that case provided, and justified the imprisonment. The Plaintiff replied de son tort demesne sans tiel cause, and the issue was received by the Court. And it was said that before the Justice in Cir he should have no averment against the presentment of the Forresters.

Out of this case we do observe 6 Conclusions. 1. That the Law of the Forrest is allowed, and bounded by the Common Laws of this Realm, and therefore it is necessary, that the Judges should know, and be learned in the same. 2. That though the Werderors be Judges of the Swanimote, and the Steward but a Minister, yet the presentment in that Court is as well by them as Werderors, as by Forresters, or Keepers, Regarders, and Agisters, by the Law of the Forrest. 3. b That a Forrester or Keeper may arrest any man that kills or chaseth any Deer within the Forrest when he is taken with the manner within the Forrest, or if the offender be indicted. But then it is demanded, e what if a man be so imprisoned, and after offer sufficient pledges, and they are not taken, what remedy for the party, seeing there are very seldom Justices seats for Forrests holden? The answer is, that in the Term time he may have ex merito Justitiæ a Habeas Corpus out of the Kings Bench, or if he have privilege, out of the Court of Common Pleas, or of the Exchequer or out of the Chancery without any privilege either in the Term time, or out of the Term in time of Vacation, and upon the return of the writ, he may be bailed to appear at the next Cir to be holden for the Forrest, &c. And may also be bailed by force of a \* writ De homine replegiando directed Custodi Forestæ, d if he be arrested by the Officers of the Forrest for hunting, &c. whereof he stands indicted or presented taken with the manner he finding 12 pledges: but if he be adjudged by the Justices in Cir, and imprisoned he cannot be bailed by that writ De homine replegiand' directed Custodi Forestæ, &c. and e if he be unjustly proceeded withal there he hath remedy by Law, as hereafter, when we treat of the Justices Seat, shall be declared. And it is to be observed, that there is a diversity between the writ De homine replegiando directed to the Sheriff, for he is restrained by the Statute of W.1. cap. 15. to replevy any man imprisoned for the Forrest, being taken with the manner or indicted, but this Statute extends not to the writ De homine replegiand' directed Custodi Forestæ, &c.

The fourth Conclusion is, That the offender may be retained by him until he hath found pledges to appear before the Justice in Cir, because (as hath been said) the Court of the Swanimote hath no power of Judicature, but if he offer sufficient sureties, he ought not to be imprisoned.

5. That this Justice in Cir at his Sessions may by the Law of the Forrest proceed upon the presentments or verdicts in the Court of the Swanimote, though they be taken in another Court, as the Justices in Cir might have done in like cases, as before in the Chapter of Justices in Cir appeareth.

6. Lastly, Note the issue joyned upon the plea of the Forrester, viz. de injuria sua propria absque tali causa, and allowed by the Court, and the consequent thereupon. And thus much for the case the Reporter saith, that it was said that the party should \* not traverse the presentment of the Forresters, Werderors, Regarders, and Agisters: f and herewith agreeth 50 E.3. and note the presentment was in that case by 36. And herein this diversity is to be observed, that if at the Swanimote the presentment of the Forresters be found true by the Jury concerning Wret or Venison, the offender standeth thereof convict in Law, and



and cannot traverse the same: but an indictment or presentment before the Chief Justice of the Forrest at a Court of the Justice Seat by a Jury, and not found in the Swainmote, may be traversed. 8 E.3. Itinere Pickering 147. a. because it is not presented but by one Jury.

4. This case also giveth just occasion to speak of the Court of the Justice Seat holden before the Chief Justice of the Forrest, aptly called in the said Book Justice in Eir, for so he is, and hath authority and jurisdiction to hear and determine concerning Tret and Menison, &c. by force of Letters Patents under the Great Seal, whereof there be two, one for the Forrest on this side of Trent, the other beyond. By which Letters Patents the King doth grant unto him Officiū Gardiani Capitalis Justiciarii ac Justiciarii sui Itinerantis omnium & singularum Forestarum, Parcorum, Chacearum, & Warrennarum suarum cum suis pertinentiis quibuscumque; \* ultra Trentam existē, &c. Dantes & concedentes eidem A. B. plenam auctoritatem & potestatem tenore prædictarum Literarum Patentium omnia & omnimoda Placita, querelas, & causa Forestarum, Parcorum, Chacearum, & Warrennarum prædictā tam de Viridi grām, quam de Venatione, ac de aliis causis quibuscumque infra easdem Forestas, a Parcos, Chaceas & Warrennas eveniē, sive emergerē audiend & determinand: Habend, occupand, gaudend & exercend offic' prædictum pertiū per se vel per sufficiē b deputatum suum sive deputatos suos suffic' durante vita ipsius A. B. &c.

And this Court of the Justice Seat cannot be kept oftner then every third year, and other Justices in Eir kept their Courts every seventh year. And (as before other Justices in Eir) it must be summoned forty days at the least before the sitting thereof: and one writ of summons is to be directed to the Sheriff of the County, which writ you shall find hereafter in this Chapter.

There is another writ of Summons directed Custodi Forestæ Domini Regis vel ejus locum tenenti in eadem, and this writ consisteth upon two parts. First, To summon all the Officers of the Forrest, & that they bring with them all Hæcords, &c. Secondly, All persons which claim any Liberties or Franchises within the Forrest, &c. and to shew how they claim the same. c And this Court of Justice Seat hath jurisdiction to inquire, hear, and determine two things. 1. All trespasses within the Forrest according to the Laws of the Forrests. 2. All the claims of Franchises, Priviledges and Liberties within the Forrest, as to have Parks, Warrens, Viveries, to be quit of allarts, and purprestures, to cut down his own Woods without view of the Forrester, &c. Likewise claims of Læts, Hundreds, Felons goods, Waifs, Strays, Fugitives, and to kill Hares and other Beasts of Chale within the Forrest, or to have a Wood infra metas Forestæ &c extra regardum Forestæ, that is to be out of jurisdiction of the Forrest and other Franchises, Priviledges, Liberties, Immunities, Freedoms, &c. within the Forrest, whereof you shall read excellent matter in the Eir of Pickering in 8 E.3. Rot.3.1. where Guilberd of Acton claimed his Woods extra regardum Forestæ, &c.

This Chief Justice may by the Statute of 32 H.8. make his Deputy (Yet all the writs of Summons ancient and late, are Coram (the Justice Itinerante) aut ejus Deputato.)

Before any Justice Seat be holden, the \* Regarders of the Forrest must make their regard by force of the Kings writ, and the regard is obambulare, to go through and view the whole Forrest and every Bailiwick of the same, ad videndum, inquirendum, imbreviandum & certificandum all the trespasses in the Forrest: his office extendeth through the whole Forrest, and every part thereof, to inquire of all offences concerning Tret and Menison, and of all concealments of any offences or defaults of the Forresters, and all other Officers of the Kings Forrest. He is a ministerial Officer, and is constituted either by Letters Patents of the King, or by the Chief Justice at the Justice Seat, or to be chosen by writ to the Sheriff. The duty of this Officer appeareth by the writ hereafter mentioned.

Before a Justice Seat there ought to be preparations for the same, to the

The Justice Seat.

\* The like office Citra Trentam, mutatis mutandis. Note, anciently this great Officer was created by Writ, as other Justices in Eir were, but now by the Statute of 27 H.8. c.24. he is to be created by Letters Patents.

See before Cap. Justices in Eir.

a This is to be understood of Parks, Chases and Warrens within the Forrests, as hereafter shall appear. b That is by the Statute of 32 H.8. cap.35.

c Cart. de Forrest. cap.16.

21 H.7.30.

32 H.8. cap.39.

\* A Regarder is derived of the French word Regardeire, that is, to view, or see, because he cannot present any thing but upon his own sight and view.

To speak once for all, the names of all the Officers from the highest to the lowest, put them in mind of their duty: Con-veniant redus nomi-na sepe suis: Nomina sunt nota rebus.



end, that god service may be done there, & quod Itinera non sint umbratilia, as taking one or two Examples in stead of many.

Breve de Regardo cum artic'.

a Forest' de Sherwood. i. Limpida Sylva.

b Cart' de Forest' cap. 7.

c 12 Capit. paten. Inferius.

In this writ nine things are to be observed.

Rex Vic' Not. Salutem. Præcipimus tibi quod Venire fac' certis die & loco quos ad hoc duxerimus providend' omnes Forestarios & Regardatores de a Sherwood ad regard' faciend' in Forest' prædict' ante advent' Justiciariorum nostrorum de Forest', & loco regardatorum nostrorum qui mortui sunt & infirmi alios eligi fac'. ita quod b 12 sint in quolibet Regard', & nomina illorum imbreventur. Et Forestar' debent jurare quod 12 milites ducent per totam balivam suam, ad videndum omnes transgressiones quæ exprimentur in c scriptis & capitulorum quæ tibi mittimus, & hoc non omittent pro aliqua re: Debent etiam milites jurare quod facient regard', sicut debet fieri & solet. Et quod ibunt sicut Forestar' eos ducent ad prædicta videnda. Et si Forestar' noluerint eos ducere, vel aliquid forisfact' concelare voluerint, ipsi milites non omittent pro illis quin forisfact' illud videant & imbrevari faciant: & hoc pro nulla re dimittant. Et quod Regard' fiat circa Fest' beati Petri ad Vincula prox' futur'. Teste &c.

The 12 Chapters abovementioned are these which the Regarders duty is to prepare.

Nota, all these 11. are to be upon his view, *super visum*, and in this respect may be resembled to a Coroner, *super visum al'*.

1. Videnda sunt omnia Assarta, &c. *Assarts.*
2. Videndæ sunt omnes Purprestur' in boscis, &c. *Purprestures in woods.*
3. Videndæ sunt omnes Purprestur' in terris arabil', &c. in Arable.
4. Vidend' sunt omnia Vasta boscorum, &c. *Wast of Woods.*
5. Vidend' sunt omnes Bosci Domini Regis, &c. *The Kings Woods.*
6. Vidend' sunt omnes Haie Domini Regis, &c. *The Hedges of the King.*
7. Item omnes purprestur' & omnia assarta, & omnia vasta, &c. *General Woods.*
8. Vidend' sunt omnes Aeræ Austurcorum, Espetvorum, Falconum, &c. *Ayeries of Hawks.*
9. Vidend' sunt omnes Forge & Mineræ, &c. *All Forges and Mines.*
10. Vidend' sunt Portus maris, &c. *The Havens of the Sea.*
11. Vidend' est Mel, si quid, &c. *Hony.*

12. Item milites debent attente inquirere in itinere suo quis habuerit arcus & sagittæ vel baliscas leporarias, burchetas, vel aliquid ingenium ad malefaciend' Domino Regi de feris suis. Balista, or Arcubalista, signifieth a Crossbow.

Leporaria, a harepipe. Burcheta of the French word Berche, a kind of Gun.

Ordinatio Foresta. 34 E. 1.

Imprimis ordinavimus pro nobis & hæredibus nostris quod de transgres' in Forestis nostris de Viridi & de Venatione de cætero fact', Forestar' infra quorum balivas hujusmodi transgres' fieri contigerint, præsentant easdem ad prox' Swanimotum coram Forestar', Viridar', Regardator', Agitator', & aliis earundem Forestarum ministris. Et super præsentationibus hujusmodi ibidem coram Forestar', Viridar', & omnibus aliis ministris supradictis per sacram tam militum quam aliorum proborum & legalium hominum de partibus vicinioribus, ubi transgressiones sic præsentatæ fact' fuer' non suspectorum, per quos rei veritas plenius inquiretur. Et sic inquit veritate præsentationes illæ per communem concordiam & assensum ministrorum prædictorum roborentur & sigillis suis sigillentur. Et si alio modo fuit indictament' pro null' penitus habeatur.

This Ordinance being made by the King only without Authority of Parliament, albeit it was in affirmance of the Law, did not bind, and therefore was not executed: and that it was but an Ordinance, or Declaration made by King E. 1. it appeareth expressly by the Statute of 1 E. 3. and by that Act of 1 E. 3. the said Declaration is rehearsed as a Law, the observation whereof is also an excellent preparation for a Justice Seat.

Viridarius is a Judicial Officer of the forest, and chosen in full County by force of the Kings writ. His office is to observe and keep the Assises or Laws of the forest, and to view, receive, and enrol the Attachments and presentments of all manner of trespasses of the forest of Werr and Wenison, and to do equal right and justice as well to poor as to rich. All this and much more you may read in the

1 E. 3. c. 8. Stat. 1. F. N. B. 164.

¶ Viridarius a viridi, Vert, or Grenhæue, for that his office principally concerneth to look to the Vert, or Grene, and to see it be maintained.



the Oath which he taketh before the Sheriff. There be most commonly four Verderers in every of the Kings Forrests.

Agitator, so called, because he taketh beasts to agistment, that is, to depasture within the Forrest, or to feed upon the pannage, and cometh of the French word Gysier, to lye, because the beasts that feed there are there levant and couchant, lyeing and rising. And his office consisteth in agitando, recipiendo, imbreviando, & certificando.

And this Officer is constituted by the Kings Letters Patents; and of these in such Forrests where there is any pannage, there be four in number.

Gruarii, ( of whom you shall read in Forrest Records ) is derived from the French word Gruyer, which signifieth generally the principal Officers of the Forrest. Et ipsi Gruarii vocantur ad similitudinem eorum qui Aucupio Regis in grues olim præerant.

Forestarius is taken for a Woodward not only of the King within his Forrest, but ex vi termini of any Subject of his Woods wheresoever they lye: which appeareth by a Writ in Bracton in these words. Rex Vic' Salut. Scias quod propter destructionem quæ facta est in bosco & terra quam A. de N. tenet in dotem in tali villa de B. de N. Provisum est in Curia nostra coram Justiciariis nostris, quod idem opponat Forestarium suum ad prædictum boscum custodiendū, ita quod prædict' A. non habeat in eodem bosco nisi rationabile estoverium suum ad ardendum & claudendum tantum super eandem terram quam ipse tenet in eodem, &c. But in legal understanding he is taken for a sworn Officer ministerial of the Kings Forrest, and his duty appeareth by his oath, which consisteth on five parts. 1. That he shall be loyal and true to the Master of the Forrest. 2. That he shall truly walk and keep the Office of the Forrestership, and true watch make both early and late both of Vert and Wenison. 3. Truly attach and true presentment make of all manner of trespasses done within this Forrest to his knowledge, and specially within the keeping of his Bailiwick. 4. The Kings counsel, his fellows, and his own, he shall truly keep. 5. No concealment make for no favour, mæd or dread, but well and truly to behave himself therein.

a Officers of the Forrest shall not be sworn on enquests out of the Forrest.

b Messarius is a Power or Harvester, derived à metendo. Fleta lib.2. cap.75. messor. 30 ass.

Thestylis & rapido fassis messoribus æstu.

Alia Serpyllumque herbas contundit olentes.

[ Surcharge of the Forrest. ] Superoneratio Forestæ, is when a Commoner in the Forrest putteth on more Beasts then he ought, and so surchargeth the Forrest. It is taken from the Writ De secunda superoneratione pasturæ in the same sense when the Commoner surchargeth. Where it is said ( tempore coronationis Regis Henrici avi, that is, of H.2. ) It is to be known that he was crowned twice, viz. the 20 of December in the first year; he caused his Son Henry to be crowned King the 15 of June in the 16 year of his Reign; Henry his son died the 11 of June in the 28 year of his Reign; after whose death King Henr yFitz Empresse was crowned again.

c Desertum, id quod ab hominibus deseritur, & feris relinquitur.

d Masura terræ, sunt in eisdem masuris 60 domus plus quam ante fuerunt. Mas de tra, that is, an exchange of Land where there is an house.

e Fugacia signifieth a Chase, and is all one with Chaisea. See the Charter of Mawde the Empress, silling her self Anglorum Domina, made to Miles of Gloucester, creating him thereby Earl of Hereford, wherein towards the end follow these words. Præcipio quod hæc omnia supradicta teneat de me libere & quiete in bosco & plano, in forestis & fugaciis, in pratis & pasturis, &c. Præterea autem concedo, ut in propriis ipsius prædiis quisque tam in agris quam in sylvis excitet agitetq; feras meas autem ne venetur, iis præsertim in locis quos privilegio circumscripti meo cum pœna præcipio.

f That H. 1. made at Woodstock a Park, which was, saith he, the first Park in England. But it is out of doubt that there were Parks in the days of the

Agistores.  
Const. & Ass. fo.  
rest. ubi sup.

Gruarii.

See the Cust. de  
Norm.

Forestarius.

Bracton lib.4.  
fo.316. a. & b.  
& 231.a.

a Ordinat. forest.  
34 E.1. cap.5.  
Regist 183. F.N.B.  
b Assisa & consuet.  
forest. 6 E.1. c.16.  
Virgil.

Regist. & F N.B.  
126. a. c. & c. Sur-  
charge.  
Mag. Cart. cap. 9.

Domesday.  
Sudsex Cicesstr.  
& sepe.

Carta Matildis  
Imperatricis Milo-  
ni de Glocest.

Int. leges Canuti  
cap. 77. Lamb.

Johannes Rossus  
& alii post eum.



Deorfald. Falda.  
ferina.

Domesday.

Chent. Certh.

Ib. parcus sylvatic  
bestiarum Devon-

scire. Winchelere

Hertfordscire. Be-

linton.

Assis. torest. 6 E. 1.

cap. 1.

Ibid. 8 E. 3. Itinere  
Picker.

Gulbert of Adons  
case.

Ib. Artic. 11.

Camia continet  
spatium octo pal-  
marum in longitu-  
dine. Dorf. clauf.

An. 16 R. 2. m. 30.

Saxons, which were called Deorfald of two Saxon words of Deor for Dæc, and Fald, for a place inclosed with pale, hedge or wall. And in the Book of Domesday often mention is made by expresse name de Parcis. Parcus bestiarum. Parcus sylvaticus bestiarum.

Haia taken for Parcus of the French word Heye for an inclosure, Rot. Inquisit. 36 E. 3. in Scacc' de forest'.

¶ Haia de Kingeslie in Hamshire.

¶ Hulmus, i. Insula an Isle. ¶ Bercaria, Vid. 1 part. Instit. Sect. 1. ¶ Mastivus mutulatus is a Mastiffe expeditated or lawed, and not mused: for no Dog by the Law of the Forrest ought to be mused. Mutulatus cometh of the Verb Demutulo, i. demembro. ¶ Bissa, i. Cerva, of the French word Biche, for a Hind. ¶ Mureleges, à legendo mures, of getting of Mice, a Wilde Cat. ¶ Tessonnes of the French word Tesson, for a Gray, Black, or Wadger. ¶ Besonus of Bison a French word for a wild Pre.

¶ Ham, Saxonice domus, home, sometime Villa, as Milcham olim Mildham, because the air was mild and temperate.

¶ Hue and Cry, Hutesium & Clambr, the one being an exposition of the other, each of them signifying, crying and shouting; verba dolentis. And Hue is derived of the French word huier and crier. But Hue and Cry by the Forrest Law is not to be made for trespass in Wret, but in Wenison only. This Hue and Cry cannot be pursued but only within the bounds of the Forrest; and the offence must be committed within the Forrest, and not within the purlicu. And this Hue and Cry may be made by any of the Kings Ministers of the Forrest, for any of them may arrest the malefactor, and none can make Hue and Cry but he that may arrest in that case, and cannot. And so are the general words, Si quis viderit, &c. to be understood.

Si quis viderit, &c. If any Township or Village follow not the Hue and Cry, they shall be amerced at the Justice Seat.

¶ Taken with the Mayneer, à Manu is in 4 kinds, viz. Dog-draw, that is, drawing after a Dæc which he hath hurt. Stable stand, viz. at his standing with any Knife, Gun, or Bow, or close with Greyhounds in his Leash ready to shoot or course. \* Back-shear, that is, carrying away the Dæc which he killed. Bloody hand, that is, when he hath shot or coursed, and is imbued with blood.

But what if iniustice be done at the Justice Seat? For example, as if a claim be made of any liberty at a Justice Seat, and is there allowed, what remedy hath the party grieved in this case? which I do the rather propound, because I find not this doubt resolved in any of the readings upon this Statute of Carta de Foresta, or in any that have written of the Forrest Laws. And I find this question resolved by a notable Book case in 21 E. 3. agreeable with the Register and other Books; where the case was this. A. & B. before the Justices of the Forrest of Pickering claimed to have within the Wood of E. within the same Forrest a Woodward proper, and also to have the windfalls in the same Wood, which claim was allowed by the said Justices, where in truth the said claim was false, to the disherison of the Commoners there: for that the Commoners within the said Town of E. had the choice of the said Woodward, and all the windfalls for their reasonable Estovers as belonging to their fræholds. Thereupon on the behalf of the Commoners the Record before the Justices of the Forrest was removed by Certiorari, (which in the Forrest Law is called a Venirefacias Record) into the Kings Bench (which Court is above all Cires) and two of the Commissioners, viz. Robert de Scarburgh and Robert Wich sued out a Scire fac' upon the said Record against the said A. & B. &c. And they declared upon the said Writ that all the Commoners had the liberties aforesaid: Exception was taken to the Writ, that the grievance is as well supposed to others, as to those two which were plaintiffs in the Scire fac'. Whereunto it was answered, that although the grievance was to others, yet those two that would complain might maintain this suit. And if the others be of Record with A. and B. yet these two may sue, and these two might have joined in Alliance. And there it is holden, that if a profit

21 E. 3. 48. a. In  
Scire fac.

Vid. 25 E. 3. fo. 43.  
Nicholas Gowers  
case.

Vid. Regist. 253. b.  
Br'e de inquiren-  
do de libertatibus  
allocatis.

re



be granted to a Comminalty out of the Forrest, the claim ought to be made by them all, but otherwise it is within the Forrest, where every one shall have his Action by himself for that which belongs to him; and in the end the Writ was adjudged to be good. But in this case somewhat is implicit, for by the Law of the Forrest, when a claim is made of any liberty within the Forrest, although no issue be joined thereupon, yet the entry is, Et quia videtur Justiciariis quod expediens & necesse ad inquirendum super præmissis rei veritatem atque quam ad allocationem clamei prædicti procedatur, inquiretur inde veritas per ministros ejusdem forestæ: and sometime tam per ministros forestæ quam per alios liberos & legales homines, at the discretion of the Justices for the advancement of truth: and accordingly the Forresters, Verderers, Regarders, and Agisters do enquire thereof. Also if a claim be made before the Justices of the Forrest, whereupon there groweth difficulty, or if a demurrer in Law be thereupon joined, the Justices may adjourn the same into the Kings Bench to be there adjudged, and then the Entry is, Ideo quoad clameum prædict' pro eo quod Justiciarii prædict' nondum adversantur de iudicio inde reddendo, datus est dies eidem H. coram Domino Rege (in tali retorn' ubique &c. de audiendo inde iudicium, &c. Et dictum eidem H. quod interim sequatur bre de Venire fac' inde recordum, &c. Postea Dominus Rex mandavit præfat' Justic' bre suum in hæc verba. \*Edw. Dei gratia Rex Angliæ, &c. Dilecto & fideli suo Ricô de Willowbye salutem. Cum vos & socii vestri Justiciarii nostri ad placita forestæ, &c. tenend' assignat' quoddam clameum de diversis libertatibus per dilectum & fidelem nostrum H. de Percy coram vobis & sociis vestris prædictis in eadem forest' fact' propter quasdam difficultates in eodem clameo content' coram nobis adjornaveritis, ut accepimus, Vobis mandamus quod si ita est, tunc omnia clamea prædicta nec non recorda & process. inde coram vobis habita coram nobis ubicunque fuerimus in Anglia sub sigillo vestro sine dilatione mittatis juxta adjornamentum prædictum hoc bre nobis remittentes. Teste, &c. Anno 12 E.3.

Virtute cujus Brevis clameum prædict', nec non recordum & process. prædict' mittuntur coram rege ad diem prædict' una cum brevi prædicto.

Postea Dominus Rex mandavit præfato R. de W. quoddam aliud bre claus. in hæc verba. Edw. &c. dilecto & fideli R. de W. Salutem. Cum vos & socii vestri Justiciarii nostri ad placita forest' in forest' H. com' Lanc' de Pick' in Corn' Eborum tenend' assignat' quoddam clameum de diversis libertatibus per dilectum & fidelem nostrum H. de Percy coram vobis & sociis vestris prædict' in eadem forest' habend' fact' propter quasdam difficultat' in eisdem clameis interveniend' coram nobis adjornaveritis, & quædam alia clamea sua similiter ibidem de quibusdam aliis libertatibus fact' allocaveritis, prout accepimus; Nos volentes tam super dictas libertates sic adjornat', quam super al' allocat' certis de causis certiorari, vobis mandamus quod si ita est, tunc omnia clamea præd' nec non record' & process. inde coram vobis, & sociis vestris prædict' habita coram nobis ubicunque fuerimus in Anglia sub sigillo vestro sine dilatione mittatis, & hoc breve, ut hiis inspectis ulterius fieri faciemus, quod de jure fore viderimus faciend'. T. E. Duce Cornub. Com. Cestrie filio nostro charissimo Custod' Angl' apud Berkhamsted Primo die Februarii anno regni nostri 13. Virtute cujus brevis clameum præd' tam adjornat' quam allocat' mittuntur coram Rege una cum bre prædict', &c.

By all which cases the former question is resolved, which case and consequents thereupon is worthy of serious consideration.

Nicholas Gower was indicted for that he killed the Kings Game in the Kings Forrest, when he was the Kings Steward of the same, and also had taken ransom for Indiments, which Indiments were removed coram Rege, and the Steward was put to answer thereunto.

Hugo le Despencer Justic' Forest' citra Trentam mandavit quoddam Breve suum Vic' Wigorn' retorn' coram Domino Rege in crastino sancti Johannis Baptiste prox' præterito, &c. in hæc verba. Hugo le Despencer Justic' Forest' citra Trentam Vic' Wigorn. Salutem. Mandamus vo-

28 E.3. *Teinere* Picker. Henry de Percys case, which depended in advilement for difficulty four years before R. de Willowby, and other Justices of the Forrest. Venire fac'. Record. Certiorari.

\* A Certiorari before Judgment out of the Chancery return'd into the Kings Bench directed to R. de Willowbie (being the ancient primary Judge) only; because he only hath the keeping of the Records.

27 E.1. coram Rege Rot. 12. Wigorn'.



Note the Writ of the Justice of the Forrest retorn' into the Kings Bench.

Breve Justiciarii so-  
reſta. Verſus Godfri-  
dum Episc. wigorn'.  
Ad finem faciend'  
pro transgreſſ.  
venationis in fo-  
reſta de Windſor.

Procedi non po-  
tuit ad finem cap.  
ſine recordo, &c.  
ACertiorari to the  
Juſtice of the For-  
reſt for the Record

Episcopus paratus  
eſt ſatisfacere.

*bis quod diſtring. Godfridum Episcopum Wigorn. per omnes terras & ca-  
talla ſua in balliva veſtra, ita quod nec ipſe, nec aliquis per eum ad ea  
manum apponat, donec aliud a Domino Rege ſeu a nobis inde habueritis  
in mandatis. Et quod de exitibus coram Domino Rege reſpondeatis, &  
quod habeatis corpus ejus coram Domino Rege in feſto Sancti Johannis  
Baptiſtae ubicunque tunc fuerit in Anglia, ad finem faciend'. pro transgreſ-  
ſione venationis per ipſum facta in foreſta de Windeſore ſicut per legalem in-  
quiſit' ſecundum Aſſiſam foreſtae coram nobis apud Windeſore captam plenius  
nobis conſtat. Et unde eidem Episcopo per literas noſtras ex parte Domini  
Regis alias mandavimus, quod pro ſine ſuo inde faciend' veniret coram no-  
bis apud London, ita quod eſſet ibi in craſtino Sanctae Trinitatis prox' prae-  
terito, vel ſufficientem Attornatum ſuum ibidem mitteret ſuam plenam po-  
teſtatem in hac parte habentem: qui ad diem illum coram nobis non venit,  
nec Attornatum in hac parte miſit ſicut ei ex parte Domini Regis manda-  
tum fuit; Et habeatis ibi hoc breve. Dat' apud Lugtheburghe die Jovis in  
Octab' Aſcenſionis Domini Anno Regni Regis Edwardi viceſimo ſexto. Ad  
quem diem Vic' nihil inde fecit, ſed mandavit quod praeceperat ballivis li-  
bertatis ejusdem Episcopi de Oſweldeſtowe qui nihil inde fecerunt. Per quod  
praeceptum fuit eidem Vic' quod non omitteret propter praedictam libertatem,  
quin diſtring' praedictum Episcopum per omnes terras, &c. Et quod de ex-  
itibus, &c. Et quod haberet corpus ejus coram Rege in Octabis Sancti Mi-  
chaelis, ubicunque, &c. ad finem faciend', &c. cum Domino Rege pro  
transgreſſ. praedict', &c. Et ſimiliter quia procedi non potuit ad finem ca-  
piend' de praed' Episcopo, &c. ſine record' praedicti Hugonis Juſtic', &c.  
de transgreſſ. praed' &c. Mandatum fuit eidem Hugoni Juſtic', &c. quod  
recordum inde coram eo habitum regi mitteret ad praefatum Terminum cum  
omnibus recordum illud tangentibus. Et Vic' nullum breve retornavit co-  
ram Rege ad praefat. Terminum Sancti Michaelis: nec praedictus Hugo  
Juſtic', &c. aliquod recordum miſit, &c. propter quod, ſicut prius praecept'  
fuit vic' quod non omitteret propter praedict' libertatem, quin diſtring' praedi-  
ctum Episcopum per omnes terras, &c. Et quod de exitibus, &c. Et quod  
haberet corpus ejus coram Rege in Octabis Sancti Hillarii ubicunque, &c.  
ad finem faciend' in forma praedict', &c. Et Vic' retorn' breve, ſed praedi-  
ctus Hugo Juſtic' nullum recordum miſit. Et ſuper hoc venit quidam Alu-  
redus de Northgrave pro praedicto Episcopo, & dicit quod praefatus Hugo  
Juſtic', &c. diſtringit praed' Episcopum per diverſa breviam ſua in Com. Wi-  
gorn' & Glouc' ad finem faciend' coram ipſo de eadem transgr. & nihilo-  
minus paratus eſt ſatisfacere Domino Regi pro praedicto Episcopo de praedi-  
ct' transgreſſ. ſecundum recordum praedicti Hugonis, & ſecundum quod  
Cur' regis conſideraverit, &c. Et quia dictus Hugo Juſtic' nullum recor-  
dum miſit per quod procedi poteſt ad finem capiend' de praedicto Episcopo,  
&c. Ideo quoad praedictum Episcopum ceſſat diſtr' uſque a die Paſchae in  
unum menſem ubicunque, &c. Et dictum eſt praedicto Aluredo quod tunc  
ſit ibi ad finem faciend' pro praedicto Episcopo, vel quod habeat Warrantum  
de praedicto Hugone Juſtic' quod finem fecit vel finem facere debeat coram  
praedicto Hugone Juſtic', &c. de transgreſſione praedict', &c. Et nihilomi-  
nus mandatum eſt praefato Hugoni Juſtic', &c. quod Venire ſic recordum  
praedictum, ut praedictum eſt, coram Rege praefatum terminum, &c.*



Observe well the parts of this Record, and a ready way to help the King to his fines after the Cir of the Forrest be ended.

On the other side it is demanded, what if a man make a just, and lawful claim to certain liberties at the Justice Seat, and cannot obtain the same to be allowed by the Justices of the Forrest, what remedy for him that maketh such claim?

\* Whereunto the answer is, that he shall have a Writ De libertatibus allocandis, directed to the Justices of the Forrest, which Writ doth appear in the Register

*a* And any person that is to make any claim may the first day of the Cir either make it in person or by Attorney, F.N.B. 26. g. And he that appears upon a presentment or indictment taken before the Justices in Cir, and traverseth the indictment, may after appear by Attorney. See before Cap. Justices in Cir the Writ in the Regist. 19. a. W. 2. cap. 10.

*b* And the entry is, A. B. po: lo: suo T.B. vel L.N. de omnibus placitis seu querelis motis seu movendis, & ad omnes libertates calumniand, prosequend, & defendend durante Itinere isto: whereby it appeareth in what generality an Attorney may be made.

*c* And this agreeth with the Register, f. 19. b. by 5 kinds of Writs which are worthy of observation, viz. <sup>1</sup> Breve de clameo admittend in itinere per Attornatum primo die itineris, &c. <sup>2</sup> De libertatibus exigendis in Itinere: <sup>3</sup> De Attornat in omnibus placitis & querelis in Itinere, & ad libertates calumniandas: <sup>4</sup> Aliter in omnibus placitis & querelis in Itinere juxta formam stat de Merton cap. 10. Glouc' cap. 8. & W. 2. cap. 10. <sup>5</sup> Aliter de Attornatis, &c.

And these Writs are to be granted ex merito Justitiæ, without any denial, as well to the Justices in Cir of the Forrest, as other Justices in Cir for the admitting of Attornies. Vid. 2 part of the Institutes, W. 2. cap. 10.

And upon search made I find the like Writ beginning, Omnibus Balivis & fidelibus suis, &c. in the Cir of Pickering, 19. b. for the Prior of St. Johns of Jerusalem to make an Attorney before the Justices of the Forrest.

But what if the Justices in Cir give an erroneous judgment, &c. what remedy hath the party grieved? He may have a Writ of Error out of the Chancery returnable into the Kings Bench, and there Justice shall be done.

*d* If a man make his claim by grant or prescription, and he or his Council mistaketh his right title in some material point, so as the claim is found against him, it is good for him that his true title be found by the same verdict specially, for then may the party by petition make a fine and pray licence to make a new claim, and thereunto he ought to be admitted.

And concerning claims it is specially to be observed, that by the Forrest Law a grant made of a priviledge within the Forrest to all the Inhabitants being Freeholders within the Forrest or such other comminalties not incorporated, is good.

*e* If a man make a false claim by claiming more then he ought, he shall be fined for his false claim, but that which he ought to have shall not be seized: As the Prior of York claimed by Charter to have Tithe of all Wenison, tam in carne quam in corio, where he ought to have it in corio, for which he was fined and enjoyed it in carne.

In the Cir of Pickering holden before Richard' de Willowby, Robert de Hungerford and John de Hambury Justices in Cir for the Forrest of Pickering, Anno 8 E. 3. a claim was made by Thomas de Pickering and Margaret his wife, viz. Habere in dominico bosco suo de Locton Woodwardum ad custodiendum Boscum suum, & quod nullus in eo amputet aut prostare faciat arborem aliquam sine voluntate sua, & quod ipsi in bosco suo possunt prostrare & dare pro voluntate sua arbores virides & luccas, & dare & vendere arbores suas pro voluntate sua sine visu Forestariorum, &c. and prescribed in the same in the right of the said Margaret, where this prescription was enquired of and allowed to be good in Law, but it was found, as to the taking of the trees without the view of the Forresters, to be untrue.

\* The like prescription made by Sellinger to take and cut down Timber trees within his own Woods within the Forrest of Hay in the County of Hereford without

\* Regist. 162. and F.N.B. 229. b. & 230. a. & Int' communia de Scaccar' de Anno 14 E. 1. de libertatibus allocandis & vide L. Ockham f. 47. 48. a 8 E. 3. Itinere Pick. 148. a. b 8 E. 3. Itinere. Pick. the case of the Priores of Rocela. Reg. 19. b.

*c* Regist. 19. b.

2 E. 3. fol. 29. Lib. 9. fol. 28. b. Labbot de Strata Marcellas case. d 8 E. 3. Itin. Pick; fol. 164. the case of William of Persay and Petronilla de Kinthorp. 8 E. 3. Itin' Pick. f. 22. Itin' Lanc' fol. 4. e 8 E. 3. Itin' Pick. f. 15. Lanc' f. 64.

Pickerings case.

\* In Cur' Scaccar' Coram Edw. Sanders Capital' Bar: & aliis Baronibus tempore R. Eliz. of the report of Popham Chief Justice.



Constit. & Affic.  
Forest. ubi sup.  
A man may claim  
to have dogs in-  
expeditate and  
hounds within the  
Forrest.

Regist. 257. a.  
F.N.B. 226. f.  
2 E.2. tra's. 9.  
Ad quod damnum.

Pasch. 5 Jac. Reg.

Vid. Reg. 258. a.  
Bowland is called  
Libera Chasca de  
Bowland.

Temps E.1. tref-  
pals 249. the case  
is to be under-  
stood of a Forrest  
where Forresters  
(there named)  
be, for every For-  
rest is a free  
Chafe, but not  
converso. 43 E.3.8.  
Vid. Dier 6 E.6.  
fol. 70.

without the view of the Forrester, and upon argument and long advisement it was adjudged, that the prescription was good notwithstanding the Ordinance of 34 E.1. and the Statute of 1 E.3. cap.2. And the reason was, because that Statute was but in affirmance of the Common Law of the Forrester, and against such a Statute a man may prescribe. And that 34 E.1. was but an Ordinance and no Statute, see F.N.B. 167. a. Register. Which judgment was agreeable to Pickering's case abovesaid, and is of great consequence: for the Statute of Carta de Foresta and most of the Statutes concerning Forrests are likewise declarativa antiqui juris; and therefore, as against the Common Law, so against them a man may prescribe upon a just and reasonable cause; but if they were introductiva novi juris, then no prescription can be made against them, unless he hath another Statute to preserve the liberties.

And if a man hath a Wood in a Forrester, and hath no such prescription, the Law doth appoint him a means to fell both Wood and Timber, so it be no prejudice to the game, but sufficient is left besides, and that is, by a Writ of Ad quod damnum, upon return whereof the King doth licence him, &c.

By the Kings commandment under his Signature and Signet, all the Judges were assembled about certain questions concerning his Forrests of Leicester in the County of Leicester, and of Bowland in the County of Warwick, to be moved to them by the Attorney of the Duchy. And the first question which was moved, was, whether the said Forrests were Forrests in name only, or in Law: which being questio facti, the Judges could give no answer: but by way of direction they resolved, that if they were Forrests in Law, it must appear of Record, for there be certain incidents inseparable to every Forrester, viz. Courts of Record, and Officers of Record, Courts of Record, as Courts of Attachments, Swanimote, and Justice Seats. Officers of Record, as Forresters, Verderers, Regarders, Agisters, &c. who are made (as it appeareth before) by matter of Record, &c. but appellation or naming of them Forrests in offices, pleadings, grants, or other conveyances, are no proofs, that they be Forrests in Law.

2. It was resolved by them, that if they be but free Chases and no Forrests in Law, that then the owners of Woods within such Chases may cut down timber or wood growing therein without view of any Officer, or licence of any; but if they cut down so much as they leave not sufficient covert, and hulse wood for the game, they shall be punished at the Kings suit. And so it is if a common person hath liberty of Chase in other mens Woods, the owners of the Wood cannot cut down all the Woods, but leave sufficient for covert, and hulse, as hath been accustomed, no more then the owners of Woods in which others have common of Estovers, can destroy the whole Woods, but leave sufficient for the Estovers.

3. And being demanded whether in the Kings free Chases a man might have common and feeding for sheep, and warren by prescription or grant? It was resolved, clearly they might, but they must not surcharge to the prejudice of the Kings game, but the owner of the soil within such a free Chase cannot erect a Warren without a Charter from the King. And it seemeth to me that by prescription a man may have common for his sheep within the Kings Forrester; for, first, I find no authority in our books (that I remember) against it; and that generally a man may common in a Forrester, it appeareth by Carta de foresta, Cap.1. 33 E.1. Stat.5. 34 E.1. cap.6. And if for common in general, especially for common appendant so much favoured in Law, and particularly for sheep, as well as for Horses and Pares. 12 H.3. Common 25. F.N.B. 230. a. And to conclude this point, the Priores of Wickham prescribed to have Common in the Forrester of Pickering, pro omnibus averiis suis, except caprellis, before the Justices in Cir in 8 E.3. Rot.31. which being found to be true was allowed to her, &c. and such a prescription may have a lawful beginning by the Kings grant.

4. That he that hath a Warren within a free Chase may build upon his own inheritance within his Warren a convenient lodge for preservation of his game. And Popham Chief Justice before all the rest of the Judges cited the said case of Selenger adjudged in the Exchequer.

Some



Some question being moved between the Earl of Nott. Justice in Cir in all the Kings Forrests, and the Earl of Dorset Treasurer of England, concerning the disposing of the Kings Woods in his Forrests; for resolving whereof by the Kings commandment all the Judges of England were assembled, who upon conference and mature deliberation resolved these seven points following.

1. That the Justices in Cir, and the Kings Officers within his Forrest have charge of Venison, and of Vert or Green hue for the maintenance or preservation of the Kings game, and therein of all manner of trees for covert, briue and pawnage. But when need is to sell reasonable woods within his Forrest, or timber for his Majesties use, the same must be sold or taken by force of the Great Seal, or Exchequer seal by the view of the Forrester to the intent that the woods or the timber shall not be taken in places inconvenient for the game. But the Justice in Cir, or any of the Kings Officers within the Forrest cannot sell or dispose of any wood within the Forrest without Commission: and so the Exchequer and the Forresters have divisum imperium, the one for the profit of the King, and the other for his pleasure.

2. That regularly neither the Court of the Exchequer, nor any of the Kings Officers can dispose of the Kings timber or woods, but it ought to be done by Commission, &c. as is aforesaid, for the Kings best profit.

3. That every man in his own Woods within the Forrest may take Housbote and Heybote by the view of the Forresters. The Kings Farmers that have clauses in their Leases to take timber, &c. by view, &c. may take the same accordingly: and so may Freeholders by prescription, and Coppelholders, which by custom have used to take Housbote, &c. take the same by view of the Forresters, &c. or otherwise according to the Custom.

4. It was resolved, that no Officer of the Forrest could claim Windfals or Dotard trees for their fees by prescription, because they were once parcel of the Kings inheritance, but they ought to be sold by Commission, as before it appeared, for the Kings best benefit.

5. That he, that hath the Verbage, or Pawnage of a Park by the grant or demise of the King or any other, cannot take any Verbage or Pawnage but of surplusage over and above the competent and sufficient Pasture, and feeding of the game: and if the owner of the game suffer the game so to encrease, as there is no surplusage, then he that hath the Verbage and Pawnage cannot put any Beasts in the Park.

6. That the owner of the Park may divide any competent parcel of the Park with Rail, Pale or Hedge for the feed of the game in Winter, and he that hath the Verbage cannot put any Beasts therein.

Lastly, if the Pasture and Pawnage of the Park be but sufficient to feed the game in Winter and Summer, the owner thereof may drive out the Beasts of him that hath the Verbage and Pawnage. And thereupon by like assent of all the Judges the Court of Exchequer took this order following with some reasonable additions.

Whereas heretofore some question hath been moved between the Lord Treasurer of England, and the Warden and Chief Justice, and Justice Itinerant of all the Kings Majesties Forrests, Chases, Parks and Warrens on this side the water of Trent, what appertaineth to each of their offices and places concerning the dealing with and disposing of Woods, Trees, and Copices within his Highnesses Parks, Forrests, and Chases, which being by his Majesty referred to the consideration and determination of his Judges, and Barons, they have resolved touching the same by one uniform assent, as hereafter followeth, viz. That as the Lord Treasurer of England for the time being, and Court of Exchequer have the only ordinary power under the King to deal therein so far forth as the same concerns the inheritance and profit of the Crown, as in the sale of Woods, Trees, Copices and such like: so in like manner it concerns the Warden and Chief Justice, and Justice Itinerant of all the Kings Majesties Forrests, Chases, Parks,

*In Baga de Forestis in Custodia Rem. Regis 12 E. 2. Com' to sell the underwood in the Park of Clarendon. 17 E. 2. Com' to sell Windfals in the Park of Northamp. 28 Com' to sell wood in Clarendon. Nota, minuti blaterones quercuum Curli & Curbi in Foresta de Grovele vend' virtute brevis Domini Regis. Simile ibidem 10, 11. 13. & 14 E. 4. Simile 17 H. 6. virtute Litterarum Pat. H 6.*

1 E. 3. stat. 2. c. 2. Constit. & Ass. Forrest. ubi supra.

Vide Intin. Pick. 8 E. 3. Rot. 30. the case of William de Perley and Petronilla his wife.

Rot. Par. 18 E. 1. fo. 16. the King may grant Estovers in his Forrest without view of the Forrester. The order of the Exchequer upon the resolution of the Judges.



Parks, and Warrens, and their ministers to deal therein so far as it may concern the preservation and maintenance of the Game, in respect of the Shades, coverts, pawnage, and such like for the Deer. And therefore it is resolved by all their opinions, that the Lord Treasurer of England and Court of Exchequer may not sell any Woods or Coppices within any the Kings Parks, Forrests, or Chases, (except windfals, rosfals and mæx dead and sear trees) without the privy and allowance of the said Warden, and Chief Justice, and Justice Itinerant, within whose jurisdiction it is: Nor may cut down the dead and sear trees, nor carry them or windfals or rosfals away, but at fit times, and by the view of such as have charge of the Game, whereby it may be seen unto, that the same may be done at fit and convenient times: and that no trees, other then those that be dead and sear: and meerly windfals and rosfals, may be thrown down or taken away without the privy and allowance of the Warden, and Chief Justice, and Justice Itinerant of his Majesties Parks, Forrests, or Chases.

And as for the Warden, and Chief Justice, and Justice Itinerant, and the Keepers and other ministers of Parks, Forrests, and Chases appertaining to the King, they may not cut down any trees for new paling or railing, or for repair of Lodges, without the Warrant and allowance of the Lord Treasurer of England for the time being: but timber needful for mending of small defects in old pales or rails that are broken, so as the same do not exceed two or three timber trees in any one Forrest, Park, or Chase, in any one year, they may be permitted to take of trees in places fit, without making wast thereof, or any spoil or prejudice to the Kings inheritance, making the Kings Surveyor of the Woods speedily acquainted, who is to see that the same hath been accordingly well imployed: and needful browse also in places fit, and times seasonable the Keepers may take for the Deer, not cutting down the lims or great boughs of the trees. And therefore it is ordered by this Court, that from henceforth where it shall be thought requisite to sell any of the Kings woods or Coppices within any his Parks, Forrests, or Chases, that a Writ or Commission in nature of an Ad quod damnum shall be directed unto the Warden and Chief Justice, and Justice Itinerant within the Forrests, within whose government the same is to be done, to enquire and certifie what number of trees and what Coppices may be sold, and in what places with least prejudice to the Kings Game; and that upon the return thereof, the sale shall be made of such trees and Coppices, as upon such Certificate shall be thought fit to be sold. And in like manner it is ordered, that for the new paling, and new railing, and new building of Lodges in any place within or about any his Majesties Parks, Forrests, or Chases, and the great repairs of old Pales, Rails, or Lodges in or about the same; that it is to be done upon Certificate from the Warden and Chief Justice, and Justice Itinerant, and the Surveyor of his Majesties Woods within whose jurisdiction it is, by Warrant from the Lord Treasurer of England for the time being.

It is very observable, that if any Act of Parliament hath been made against any of the Articles of the Statute of Carta de Foresta, by the Act of Parliament of 42 E. 3. the same is made void, and by the Statutes of a Confirmationes Cartæ all judgments given against any of the points of Carta de Foresta, shall be holden for void. And where H. 2. Fitz Empresse claimed that he might make Forrests not only within his own Woods and Grounds, but in the Woods and Grounds of his Subjects, and thereupon made divers such Forrests within his own and other mens Woods and Grounds: whereupon some Readers and others that have followed them are of opinion that H. 2. might De jure do that which he did. But this Act of Carta de Foresta, which is but a declaratory Law restoring the Subject to his former right, is directly against that conceipt, in these words. *Inprimis omnes Forestæ, quas Henricus avus noster afforestavit, videantur per bonos & legales homines; & si c. boscu aliquem alium quam suum dominicum afforestaverit ad damnum illius cujus boscu ille fuerit, statim deafforestetur; & si boscu suum proprium afforestaverit, remaneat foresta, salva d. communia de herbagia & aliis in eadem foresta illis qui prius eam habere consueverunt.* To the same effect is the

42 E. 3. cap. 1.

a Confirm. Cart.

25 E. 1.

b Cart. de foresta. cap. 1. &amp; 2.

c This is an Act of restitution, for if the King might have made a Forrest in other mens Woods, then could not the owner have felled down his own woods without view or license, &amp; sic ad damnum illius, &amp;c. d Nota, all manner of Commons are saved.



third Chapter. Neither could H.2. or any other King have made or raised a free Chase, Park or Warren for himself in any of the grounds of the Subjects; for it is truly said in Pl.Com' that the Common Law hath so admeasured the Kings prerogatives, that they should not take away, nor prejudice the inheritance of any. But we agree, that all the Lands of the Subject are originally derived from the Crown: And therefore when the ancient Kings had the most part in their own hands, or at least great Desarts, waste and woody grounds for want of habitation, they might make what Forrests it pleased them therein, which may be a reason and cause of a lawful beginning, and therefore a Forrest may be by prescription good in Law over other mens grounds. But the King in his own grounds may make a Forrest at this day, which is also proved by these two Chapters, for such Forrests are thereby saved and enacted to stand.

Pl. Com. Seignior  
Berkeley's case. fo.  
236.

King H.8. intending to make a Forrest about his house at Hampton Court assigned and limited a certain Territory of grounds for nourishing and generation of Beasts of Venery, and Fowls of Warren, extending over the Lands and Grounds of divers and many Freeholders, and Copholders within the Parishes, Townships, and Villages of Eastmulse, Westmulse, Walton, Elther, Weybridge, and part of Cobham: and finding that he could not erect either Forrest or Chase over other mens grounds without their consents, did agree with the Freeholders and customary tenants, as by his Indenture bearing date the first day of October in the 29 year of his Reign, between him on the one part, and Sir Richard Page Knight, Thomas Henage Esquire, and other the Freeholders and customary Tenants in the Towns and Villages aforesaid of the other part, wherein the King doth name it (ad faciendum populum for the easier passage) Hampton Court Chase. But afterwards (in close words in several places) that it should have all such and like Liberties, Jurisdictions, and Preeminences, Laws, Statutes, Officers, &c. \* as any Chase or Forrest within this Realm had, &c. And all offences done within the same, should be punished as if the same had been done within any Chase or Forrest within this Realm. And the King did thereby covenant and grant, that the Freeholders and Copholders aforesaid might fell and take their Woods, Groves and Coppices, at their will and pleasure without any view, &c. and to make their hedges and fences about their Corn, &c. to keep out the Deer, &c. And (for recompence to both Freeholders and Copholders, &c.) that the third part of the free rent of every Freeholder should be deducted, and the moiety of the fine of the heir of every Copholder should be also deducted, &c. which Indenture and all the covenants therein being recited, it is enacted by authority of Parliament accordingly. By which Act and divers general clauses referring to Forrests, the King intended to have it a Forrest. But hereby it plainly appeareth both by the Kings said Indenture, and by the judgment of the whole Parliament, that the King could neither erect any Chase or Forrest over any mans grounds without their consent and agreement. And yet King H.8. did stand as much upon his Prerogative as any King of England ever did.

31 H.8. cap. 5.

\* Nota:

But to join this new with some that is ancient. In Rot. Parl. anno 18 E. 1. there is a notable Record in these words:

Rogerus Episcopus Coventr. & Lichf. queritur contra Rogerum Extraneum & socios suos Justic' Domini Regis de Foresta in Com. Staff. Eo quod seifs. in manus domini Regis boscos ipsius Episcopi de maneriis suis de Cannock & Ruggeleghe, &c. Rogerus & alii Justiciar' ven' & dicunt, quod in Itinere suo presentatum fuit per Viridiar', Forestar' & alios fideles Domini Regis, quod predicti bosci super Dominum Regem & ejus progenitor' per ipsum Episcopum & predecessores suos purprestabantur. Et eo quod licet eis Justiciariis in Itineribus suis purpresturas factas infra metas forestae Domini Regis in manus Domini Regis seisire, ideo seisire fecerunt, &c. Et Episcopus bene concedit quod sunt infra metas forestae: Sed dicit quod Rex Ric' per cartam suam Dat' 4 die Decembris Anno regni sui primo dedit Hu-

Petitio Episcopi  
Covent. & Lichf.  
contra Justiciarios  
Forestae.

Purprestur'.



Gnowshall.

Nota, in boscis deafforestatis per cartam licet fugare, & voluntatem inde facere; a fortiori, in boscis deafforestat' virtute Actus Parl. de Carta de Foresta.

38 H.6.fo.10. acc'.

Adjorned into Parliament.

Deafforestatio per Cart. Nota.

\* Nota, infra metas forestæ, &c. tamen extra forestam. Foresta de Cannock.

See hereafter pag. 307.

1 E.3. ca.1. Stat.2. Rot.Parl. 1 R.2. nu.61. 5 R.2.84.

goni tunc Episcopo Coventr. & Lich. predecessori suo & successoribus suis dicta duo maneria cum Ecclesiis, hundred', & omnibus aliis libertatibus. Et per aliam cartam dat' 30 Novemb. Anno regni sui primo concessit dicto Hugoni quod omnia maneria sua, terræ & omnes homines sui & feod' Ecclesiæ de Covent. & Lichf. de Cestr. & Salop, & de Gnowshall & omnium Ecclesiarum suarum, libera essent & quieta de foresta, & de placitis forestæ, de vastis & assartis & regardis forestæ, cum multis aliis libertatibus in eisdem cartis recitatis, &c. Virtute quarum Cartarum, ipse & omnes predecessores sui a tempore consecutionis earundem Cartarum solebant fugare in dictis boscis, & voluntatem suam inde facere, &c. Et petit quod dominus Rex, &c. Et prædict' Justic' dicunt quod Dominus H. Rex pater Domini Regis nunc fuit in seisinâ dictorum maneriorum & boscorum. Et scrutatis Rotulis, & Brevibus Scaccarii invenitur primum breve regis H. An. regni sui 14 Vic. Staff. direct', & quod sciat, quod reddidit A. tunc Episcopo Covent. & Lichf. dicta maneria, &c. Item 2 alia brevvia Baronibus de Scaccario direct'. quod computent Vic. Staff. 30 s. 6d. pro med' pro anno 14. Item comp. &c. 61 s. pro Anno 10 pro dictis maneriis, &c. Et præd. Justic. dicunt, quod patet per easdem Cartas quod carta per quam Episc. clam. esse quietus de foresta, &c. data fuit & facta ante cartam per quam dictus Rex R. dedit Episcopo, manerium & boscos prædictos, per quod dicunt quod prædict. Episcopus non potest clamare dictos boscos esse quietos, &c. per formam dictæ Cartæ factæ ante donationem dictorum boscorum: ob quod datus est dies dicto Episcopo, &c. in unum mensem ad Parliament. &c. Postea ad Parliamentum nunc, &c. venit prædict. Episc. in propria persona sua, & reddidit Regi dictos boscos ut jus ipsius Regis. Et idem Dominus Rex ex gratia sua concessit & dedit eosdem boscos prædicto Episcopo per easdem metas, bundas, & divisiones per quas ipse & predecessores sui a tempore consecutionis Cartæ prædictæ Richardi Regis boscos illos tenuer', &c. Et quod habeant & teneant liberos ab omnimodis placitis forestæ, &c. \* Et quod nec Justiciar' forestæ seu Forestar' Viridar' & Regardatores, seu alii ministri quicunq; se intromittant infra metas supradictas licet sint infra metas forestæ antiquas de Cannock. Et pro hac, &c. idem Episcopus cognovit se teneri Domino Regi in mille libris sterling.

Observe well this Record, and the parts of the same. And it is to be known, that where divers perambulations were made in the reign of H.3. E.1. and E.2. that all these perambulations and others that should be made (albeit there be no Charters thereof now extant) are established and made good, both by the Statute of 1 E.3. ca.1. Stat.2. in print: and by an Act of Parliament in 1 R.2. nu.61. in the Roll of Parliament, and not in print; and by another Act of Parliament 5 R.2. nu.84. not in print. For albeit it be to be presumed that Charters have been made according to the Perambulations; yet forasmuch as time wears out many things, if Charters should now be required, many places should become Forrest again; which now are in peace and deafforested.

The form of the perambulation of a Forrest is, Perambulatio facta in Com' Eborum de foresta de G. die Anno Regis, &c. apud E. coram A.B. C.D. Justiciariis Domini Regis ad dictam perambulationem faciend' assignatis per sacramentum F.G. M.P. N.S. &c. Qui dicunt super sacramentum suum, &c. And so set down the metes and bounds of the Forrest, shewing what is within the Forrest, and what to be extra forestam secundum tenorem Magnæ Cartæ de Foresta, eo quod afforestata fuerit post coronationem Domini Regis Henrici Regis 2, &c. In cujus rei testimonium, &c.

Nota,



Nota, the Charters be general and short to this effect. Rex omnibus ad quos presentes literæ pervenerint, Salutem. Sciatis quod volumus & concedimus pro nobis & hæredibus nostris, quod perambulationes factæ coram A.B. C.D. ad hoc assignat' per præceptum nostrum de forestis nostris in Com. Eborum de cætero tenentur & observentur per metas & Bundas contentas in eisdem perambulationibus, quarum tenor de verbo in verbum sequitur in hunc modum. And rehearse the whole perambulation.

A long complaint in Parliament against Forresters, for afforesting of mens purlieus, for undue trial and for their extortions, too long here to be rehearsed, but worthy to be read, with a prayer that the great Charter may be kept, and that all men may enjoy their purlieus according to the perambulations made in the Reign of King E. 1. whereunto the King answered, [The King would the great Charter to be kept, and that such as will complain in the right of their purlieus, may have Writs out of the Chancery.] See Rot. Parl. 50 E. 3. nu. 80. & 1 R. 2. nu. 60.

Purlieu containeth such grounds which H. 2. R. 1. or King John added to their ancient Forrests over other mens grounds, and which were disafforrested by force of the Statute of Carta de Foresta, cap. 1. & cap. 3. and the perambulations and grants thereupon. And is derived from a French Adjective and a French Noun, viz. Pur which signifieth clear, entire, and exempt, and Lieu, that is, a place entire, clear, or exempt from the Forrest. And both of these derived from the Latin Adjective and Noun, viz. purus locus; and in this sense the Civilians called that purum locum qui sepulchrorum religioni non est obstrictus. And the perambulation whereby the purlieu is deafforrested is called in French Pourallee, i. perambulation, so as the purlieu and pourallee are two distinct things, and \* purlieu is the right name of the place deafforrested.

By this it appeareth that Chases that never were any Forrests cannot have any purlieu, and consequently the case in 16 Eliz. Dier 326, 327. is mistaken, for the Chase of Whaddon never was any Forrest. Whereby it may be observed, how necessary the true derivation of words is, according to the example of Littleton; as in divers parts of the first part of the Institutes appears.

By this deafforrestation the owners of the grounds within the purlieu may at their will and pleasure fell, cut down, eradicate, and stub up all the Timber, Woods, and Underwoods, convert their Pastures, Meadows and other Grounds to arable, inclose them in with any kind of inclosure, build and erect new edifices upon the same or any part thereof, and to dispose and use the same after the disafforrestation, as they never had been afforrested.

And where some have conceived, that quoad to the owners of the soil the purlieu is disafforrested, but not as to others, but as to them it should remain a Forrest, by reason of these words in the first Chapter, ad damnum illius cujus boscus ille fuerit, those words were added to shew the unlawfulness of the afforrestation, because it was ad damnum, &c. as hath been proved before. And then these men must make a diversity between a deafforrestation by force of the first Chapter of afforrestations in the Reign of H. 2. And deafforrestations made by force of the third Chapter of afforrestations in the Reigns of R. 1. and King John, for there the clause of ad damnum is omitted, and therefore those afforrestations are utterly made void against all men.

The Statute of Carta de foresta hath been above 30 times, and lastly in 4 H. 5. confirmed and enacted, and commanded to be put in execution, and we find no authority in Law that we remember against our opinion herein; therefore we proceed and do hold, that in any purlieu a man may as lawfully hunt to all intents and purposes within the purlieu within his own grounds, as any other owner may do in his grounds that never were afforrested at all.

Some have endeavoured to limit the purlieu man to hunt by custom or prescription, but all the said Statutes were made within time of memory against which they cannot prescribe. Some endeavour to maintain it to be by Forrest Law, but it is questioned whether there be any such Forrest Law in that point, for

Rot. Parl. 22 E. 3. nu. 26.

Purlieu what it is, and whereof derived.

33 E. 1. Stat. 91

See the first part of the Institutes. Sect. 170.



Quod non legitur non creditur: but to conclude this point, no Forrest law can stand against laws enacted by Authority of Parliament. Others think, that the said Statute of 33 E. 1. Stat. 5. or some other Statute in the reign of E. 1. E. 2. or E. 3. do in some sort restrain their hunting, which is utterly denied, that they are restrained by any such in any of the said Kings times; but if any such statutes were, they are, being contrary to the Statute of Carta de Foresta, repealed by the Statute of 42 E. 3. ca. 1. And all the Statutes or Assises, either that of Woodstock in the reign of H. 2. or any other in his time, or in the reigns of R. 1. or King John are all abrogated by the Statute of Carta de Foresta made in 9 H. 3. ca. 1. & 3. as to the Deafforestations, &c. And the Statute or Assise of Woodstock doth extend to Deafforestations before, and not after, the words thereof being, Nullus faciat aliquam installationem inter forestā & boscos, &c. p ipsum vel progenitores suos deafforestatos. And for the same reason the Purlicu man may keep his dogs within the purlicu unexpeditated, and saving the wild Beasts do belong to the purlicu man ratione soli, so long as they remain in his grounds, he may kill them, for the property ratione soli is in him; so as hereby concerning purlicus, and by the resolution of the Judges concerning Chases, it appeareth that the makers of the Statute of 22 E. 4. mistook the Law in both of them, viz. concerning Chases and Purlicus, but the Statute being in the affirmative worketh no prejudice to any. And if he chase them with Greyhounds, and the Beasts of the Forrest doe lie towards the Forrest for their safety, if the owner pursue them to the bounds of the Forrest, and then call back his dogs, and do his endeavour to call them again from the pursuit, although the dogs follow the Chase in the Forrest, and kill the Kings Deer there, this is no offence, so as the owner enter not into the Forrest, nor meddle with the Deer so killed. But if the dogs fasten upon the Deer, before he recover the Forrest, and the Deer drag the dogs into the Forrest, there the Purlicu man may follow his dogs and take the Deer.

In some Letters Patents of the perambulations or pluralities of Forrests made by King E. 3. to any County where Lands are disafforrested, which we have seen, there is reserved to the King 40 days for his wild beasts within the purlicus to return again, and for his Rangers within that time to rechase them into the Forrest, which is taken to be a convenient time for that purpose. And albeit these purlicus be absolutely disafforrested, and have no liberty of Forrest there, yet for conveniency it hath been permitted that the Rangers of the Forrest should as often as the wild Beasts of the Forrest range into the purlicu, with his hound rechase the same: and these Rangers have used to present unlawful hunting and Hunters of the Kings Deer within the purlicu, as in the night, or at unseasonable Deer, or killing of the Kings Deer in purlicus by no purlicu men, but unlawful Hunters or the like: such as should not take advantage of their own wrong both to the King and the purlicu men, and that they are known to be Deer belonging to the Kings Forrest, because there are no other within the purlicu; wherein the best rule we can (for avoiding of tediousness) give the Reader, is to follow the judicial Records and Presidents of the Cires holden before grave and learned Justices in Cire, as those of Pickering, Lancaster, and the like, concerning presentment of matters done within the purlicus of the Rangers, whereunto we do rather incline, when we consider the oath which the Rangers have anciently taken, and continually in these words. You shall truly execute the office of a Ranger in the purlicu of P. upon the border of the Kings Forrest of P. You shall rechase with your Hound and drive the wild Beasts of the Forrest, as often as they shall range out of the same Forrest into the purlicus; You shall truly present all unlawful hunting and Hunters of wild Beasts of Venery and Chase \* as well within the purlicus, as the Forrest, and those and all other offences you shall present at the Kings next Court of Attachments, or Swainmote which shall first happen: So help you God. And it is to be noted, that in such Forrests as have no purlicus, there is no Ranger.

It was petitioned in Parliament, that no man be impeached for hunting within the purlicu or without the bound of the Forrest, and that there be levied no assart rents.

Rot. Par. 51 E. 3.  
nu. 39.

22 E. 4. cap. 7.

43 E. 3. 8. the Earl  
of Arundels case.

38 E. 3. fo. 10. b;  
simile. 12 H. 8.  
fo. 10. a.

20 E. 3. Rot. Par.  
1 pars pro deaffo-  
rest. Forestar de  
Kemsam.

Vide Rot. Par.  
12 E. 3. nu. 26, 27.  
a complaint of the  
purlicu men, and  
the Kings answer.

The oath of the  
Ranger.

\* This proveth  
that the purlicus  
are no part of the  
Forrest, but dis-  
tinct things.

Rot. Par. 51 E. 3.  
nu. 39. 50 E. 3.  
nu. 80. 1 R. 2.  
nu. 60.

The



The Petition consisting on two parts. 1. Concerning hunting in the purlieu, or out of the bounds of the Forrests, the second concerning assart rents.

To the first, the King answereth, That the Charter of the Forrest shall be kept, which is a yielding to the Petition for that part, for by that Charter the bounds of the Forrests are established, and no purlieus excepted.

As to the second, he answered, That the demand was unreasonable.

The Commons made Petition that men might enjoy their purlieus freely, <sup>2 R.2. tit. 43.</sup> and that perambulations might be made as was in the time of King H. 2.

Whereunto the King answered, The King thinketh the perambulations are duly made, and who will, may complain, and shall be heard.

The Abbot of Whitby had a Forrest called Whitby Forrest ( by the grant of <sup>In Itin. Pick.</sup> H.2. and King John with all Officers incident thereunto) adjoining to the For- <sup>8 E.3. Rot.42.</sup> rest of the Earl of Lanc' called Pickering Forrest, and the game of the Forrest of Pickering ranged into the Forrest of Whitby, Idem Abbas habens exploratores suos statim ponere fecit retia, & alia ingenia sua juxta Hakeness & alibi distan a Foresta ista per tractum unius arcus & aliquando plus, & postea cum canibus excitare fecit feras, ita quod p excitationem illam plures ferarum illarum in redeundo & fugiendo versus forestam de Pickering decidunt in retibus & ingeniis predictis & capiuntur, & annuatim capere facit in destructionem ferarum forestæ predictæ de Pickering ad damnum Domini, & nescitur quo Warranto; per quod præceptum fuit Vicecomiti quod Venire faciat prædictum Abbatem. Whereupon the Abbot came and pleaded his title to the Forrest, ut supra. Et quod omnes Abbates loci prædicti virtute Concess', &c. prædictos cervos & cervas in locis prædictis ubi retia & ingenia prædicta posita fuerunt, & quæ fuerunt infra limites Forestæ suæ de Whitby, & quoad quod idem habens exploratores super feras Domini, &c. retia & ingenia poni fecit prope Forestam de Pickering, &c. per quod in redeundo plures feræ capti fuerunt, quod omnino est contra Assis. Forestæ, idem Abbas dicit, quod ad hoc respondere non debet, &c. Et quia manifeste liquet Curia, &c. quod feræ de Foresta ad Forestam aliter conferri non possunt, nisi ipsius in cujus Foresta inveniuntur, eo quod signo aliquo non consistunt signatæ nec divisas aliquas cognoscunt. Ideo consideratum est, quod idem Abbas eat sine die.

Nota, for Harts, Hyndes.

The Kings Deer are not branded or signed with any mark, that they may be known whose they are out of the Forrest. 7 H.6. fol.36.

By which Record and many others it doth appear, that when the Kings Came of the Forrest do range out of the Forrest (and Purlieu, if any be) they belong not to the King, but are at their natural liberty. & occupanti conceduntur.

And this is the reason that some have said, that where the King was seized of the Forrest of M. in fee, and that a custom was pleaded time out of mind, that if any Beast of the Forrest should range into the free Chase of the Abbot de Diden adjoining to the said Forrest, that the Forresters of the said Forrest, &c. might enter into the said Chase, and with little dogs rechase the Kings Beasts of his Forrest into the Forrest again, that this custom is against Law, for that ( besides the reason yielded in the Abbot of Whitbies case ) immediatly when they are out of the bounds of the Forrest, the property is out of the King, for the being within the Forrest maketh the property in that case. But the book of 7 H.6. is left at large whether the prescription be good, or no, and yet aid was thereupon granted: and Dier 16 Eliz. 326, 327. agreeth therewith. But in the Abbot of Whitbies case there is no prescription for the King, but against him.

Lib.5. fol.104.b. Rolstons case.

16 El. Dier 326, 327.

It is to be observed, that by the Law of the Forrest, when any claim is made by any ancient Charter of any Franchise, Liberty, or Immunity, or discharge within the Forrest by ancient and obscure terms and words, the entry is ( for example ) Et quia non liquet Curia manifeste cujusmodi libertates prædicti vocabulorum idem Prior habere intendit, dictum est Priori quod prædicti vocabula declaret, &c. And after he that maketh the claim, declareth, that is, explaineth the same, and pleadeth further, Quod ipse & prædecessores sui semper à consecratione Cartæ præd' sine interruptione uli sunt & gavisii sunt libertatibus prædictis ( according to his declaration ) & hoc paratus est verificare per ministros istius Forestæ, &c. Ideo inquiratur rei veritas per eosdem, &c. or the entry is after the declaration made, Et quia videtur Justiciariis quod expediens est & necesse, quod Curia certifioretur

Vide Itin. Pick. 8 E.3. The Prior of Ellortons case. Rot. 35. Et ibid. the Prior of Maltons case. Rot.



## Regula.

Hil. 6 E. 3. Rot.  
179. Coram Rege  
diuturnitas & lon-  
gæva possessio vir-  
tute generalium  
verborum in anti-  
quis Cartis suffici-  
unt.

8 E. 3. Itin. Pick.  
Lambstons case.  
putura.  
Geldum in Domes-  
day sape pro  
Scot. Anglice.

23 H. 3. gard. 148.

tioretur super possessionem ipsius Prioris in hac parte, inquiratur inde veritas per ministros ejusdem Forestæ, and thereupon the Foresters, Verderers, and Regatders are sworn, and so much as they find have been continually used, is allowed, and so much as hath not been used is disallowed; so as Use and continual possessions are the best Expositors of ancient and obscure words.

For example: **¶** Quietum esse de misericordia Forestæ, is to be quit of all amerciaments in the which he in any sort might fall within the Forrest. And here misericordia is taken as well for a fine, as for an amerciament.

**¶** Quietum esse de Vasto, if he did wast in his woods within the Forrest he should not be amerced, nor for any other wast.

**¶** Quietum esse de rewardo, that is to be quit of amerciament wheresoever in any Parish within the Forrest, if the usage had been accordingly.

**¶** Quiet de omnibus geldis, i. quiet esse de omni putura Forestar, & de omni præstatione, ad collectionem garbarum, agnorum & lanæ ad opus forestar ejusdem forestæ.

**¶** De Woodgeldis, i. quiet esse de omni collectione in foresta præd' ad opus quorumcunque ministrorum forest' præd' ratione boscorum.

**¶** De Horngeldis, Quietum esse de omni collect' in foresta de bestiis cornutis asses.

**¶** De Fotegeldis, i. quiet esse de finibus & amerciamentis pro canibus infra forestam in expeditatis, if the usage hath been accordingly, otherwise not: for ancient Charters by the Law of the Forrest must be adjudged according to the continued usage, and not ex vi termini.

**¶** De Burestall i. ubi homines convenire tenentur, ibidem convenire ad stableiam faciend' circa feras, & ad easdem congregand', quietum esse de hoc servicio, quando Dominus chaceaverit.

**¶** De Tristris, anciently witten traistis, and is derived of traist, i. trust, and signifieth, ubi alii homines manentes in eadem foresta tempore quo Dominus chaceaverit in eadem venire debent, & confisi sunt, Anglice are trusted, ad tenend' Leporarios certis locis assignatis pro feris ibidem expectand' & capiend', quietum esse de hoc servicio.

**¶** De Fledwite, of fled, a Saxon word, a fugitive, one that fleeth, and outlaw, and wite a Saxon word also, a freedom.

\* Carta de Foresta cap. 14.

**¶** De Careyo, cum aliquæ Carræ, seu carectæ cartatæ transeuntes per forestam, & similiter \* summagia seu Somagia equorum consuevit solvere secundum magis vel minus ministris ibidem pro chemino, ibidem habend'. Quietum esse de hujusmodi solutionibus. Summagium or Sommagium cometh of the French word sommier or summier, which signifieth a Horse carrying any load. Chimagium, a Toll for way-faring men through a Forrest, derived from the French word Chemin for a way.

**¶** De Scoto, seu Shoto, quando homines faciunt collectum inter se ad aliquod obtinendum seu evitandum. Quietum esse de tali collect'. **¶** De tallagio, idem ut de Scoto.

8 E. 3. Itin. Pick.  
fol. 149.

**¶** Extra regardum forestæ. If any man within a Forrest do hold his woods or lands by grant or prescription to be extra regardum forestæ, the woods or lands are deafforested.

**¶** Exilium, i. cum homines utlegantur in Itinere istius forestæ pro transgressionem Viridis seu Venationis.

**¶** De escapio, secundum Assisam forestæ si averia alicujus in landis vetitis, vel tempore vetito in eadem inveniantur, prima vice pro quolibet pede averiorum prædict' ipsi quorum fuerint amercientur ad unum denarium; & si secundo ibidem inveniantur, similiter pro quolibet pede unum denarium & si tertio ibidem inveniantur, averia illa remaneant Domino forisfacta, de quibus amerciamentis & forisfacturis per hujusmodi vocabulum, de escapio, extitit quieti.

F. N. B. 230.

**¶** De Pannagio, that is, to be quit to pay any thing for pawnsage.

**¶** Assertum, Assert, is so called of the effect (as some hold) and is derived (say they) of ad and fero, assero, because of wood grounds, marshes or wast grounds they



they are converted to be sown with Corn, and therefore in the Register, and F. N. B. it is written assartare, with an E. and so it is in Carta de Foresta c. 4. Bracton hereof saith, Illud quod fuit aliquando boscus, & locus vaste solitudinis & communia & jam inde efficitur assartum, vel redactum est in culturam. And here with agreeth Fleta, Illud olim fuit foresta & boscus, &c. & jam efficitur assartum, & reductum est in culturam, & idem dici poterit de mariscis & aliis vastitatibus in culturam redactis.

Others fetch it otherwise, but we hold, that it is derived of the French word essarter, to grub up, or clear a ground of wood, &c. and this appeareth by Domesday. Herefordsh. Merchelay in eodem manerio sunt 58 acra terre provect' de sylva, written over the same essars, de essart sylva exeunt 17 s. & 4 d. E being turned into A.

Radulphus Episcopus Karleol petit versus Priorem Ecclesie Karleol decimas duarum placearum terre de nova assartarum in Foresta de Inglewood, quarum una vocat' Lythwait & alia Kyrthewayte, que sunt infra limites parochie sue de Aspaterick. Et super hoc similiter venit Mr. H. de Burton persona Ecclesie de Thorisby, & easdem decimas clamat ut pertinen' ad Ecclesiam suam. Et Prior venit & dicit quod Henr. Rex vetus concessit dicto Deo & Ecclesie sue beate Mariæ Karleol omnes decimas de omnibus terris quas in culturam redigerent infra Forestam, & inde eos feofavit per quoddam Corn eburneum quod dedit Ecclesie sue præd' &c. Et Willielmus Inge qui sequitur pro Rege dicit quod decime præd' pertinen' ad Regem & non ad alium, quia sunt infra bundas Forestæ de Inglewood. Et quod Rex in Foresta sua præd' potest villas edificare, Ecclesias construere, terras assartare, & Ecclesias illas cum decimis terrarum illarum pro voluntate sua cuicunque voluerit conferre, &c. Et quia Dominus Rex super præmiss' vult certiorari, ut unicuique tribuatur quod suum est, assignetur, &c. & certificent Regem ad proxim' Parliamentum, &c.

¶ a Purpresture. For this and the derivation, see in the Second part of the Institutes, Statutum de Bigamis c. 4. and the exposition upon the same, and Carta de foresta cap. 4.

¶ b Coopertura is a Thicket or Covert of wood.

¶ c Macremium is derived of the old Norman word Marisme for Timber.

¶ d Scotales, Scotale, derived of two English words Scot and Ale, as much to say as a tribute or contribution of drinking for the ministers of the Forrest when they came to the house of any, whereunto others are contributory within the perambulation of the Forrest, which then was called e potura, a drinking. And after they claimed the same for all victuals for themselves, their servants, Horses, and Dogs, which was called putura; and this doth notably appear by a Record in 5 E. 3. in these words.

¶ f Putura in Chacea de Bowland, i. consuetudo clamata per Forestarios, & aliquando per balivos hundredorum, recipere victualia, tam pro seipis, hominibus, equis & canibus de tenentibus & inhabitantibus infra perambulationem Forestæ seu hundredi quando eo pervenerint, nihil inde solvend'. Where the Statute of Carta de Foresta speaketh, Nullus Forestarius seu balivus de cætero faciat Scotales, &c. By the Statute of 25 E. 3. it is enacted, that no Forrester or Keeper of Forrest or Chase, nor any other Minister shall make or gather sustenance, nor other gathering of Victuals, nor other thing by colour of their office against any mans will within their Bailiwick or without, but that which is due of old right, that is, those fees, which time out of mind they ought to have within that Forrest, and as shall appear to be due by the oath of 12 Regarders.

de putura. g 25 E. 3. cap. 7. stat. Cap. Itineris fillenale, of the Saxon word fillen, or fullen, and ale, i. an Ale feast, whereat they were filled with Ale. Bracton l. 3. f. 117. in reciting of Capitula Itineris, calleth it Filckale, i. Fildale, an extortion colore computationis. Vide Fleta lib. 1. cap. 20. Carta de Foresta cap. 7.

Regist. 157. Fleta l. 2. c. 35. F. N. B. 226. f. Cart. de Forest. cap. 4. Bract. l. 4. f. 226. Fleta l. 4. cap. 22. Lib. 2. cap. 25. Vide Lucubr. Okkam 20. b. Rot. Pat. 51 E. 3. nu. 39.

Rot. Plac. Parl. de An. 12 E. 1. Rot. 8. Inter Episcopum Karleol' & Priorem ejusdem de decimis assartorum.

a Glanv. l. 9. c. 11. 12. Fleta l. 2. c. 35. 18 E. 2. de visu Franc. pleg. Dier 7 El. 240. b Cart. de Forest. cap. 12. c 8 E. Itin. Pick. fol 17. d Cart. de Forest. c. 7. Fleta l. 2. c. 35. Cap. Itin. W. 1. c. 4. Pastur. pauperum. e Potura. Vid. 45 E. 3. 15. & F. N. B. 209. b. De potura pauperum, a drinking or sustenance for the poor. 12 H. 4. 24 Hil. 5 E. 3. Coram Rege Rot. 30 Eborum. 8 E. 3. Itin. Pick. fol. 150. b. Putura. f 8 E. 3. Itin. Pick. Prior de Ellorons case. Quiet' de geldis is to be quit to



8 E.3. Itin. Pick.  
Sir John de Mel-  
facs case.

¶ Chablicia, or Cablicia, browse wood, derived of the French word Chablis, as boys Chablis, either rent down from trees by the wind, or branches of trees cut for the browse of Deer.

¶ Parkebote, to be quit of enclosing of a Park or any part thereof, derived of two English words, Parke, and bote.

Fleta li. c. 47.

¶ Brigbote, or Bruckbote, to be quit of making of bridges.

¶ Pannagium, or panagium, is derived from the French word panage, i. pastura pecorum in nemoribus de glandibus & aliis fructibus arborum.

Trin. 2 E. 3. Co-  
ram Rege Rot. 12.  
Carta de Foresta  
cap.6.

¶ Expaltare canes, i. expeditare canes. Expeditatio is derived of ex & pede, because the Dog is lamed in the foot, in expeditatus is unlamed.

Canis in this Act is taken for Mastivus by these words, talis expeditatio facta p Assisam communiter usitatam, which hath reference to the Assise of the Forrest, tempore H.2. Art.6. which speaketh only de expeditatione Mastivorum, & Assis. & Consuetud. Forestæ, 6 E.1 c.9. speaketh only de Mastivo.

¶ Ortelles, this word is taken from the French word Orteilles, in English, Claws.

Carta de foresta,  
ubi supra.

¶ Pellota, of the French word Pelote, and they from Pila: In this Act it is taken for the ball of the foot, sine pelota, without the ball of the foot. And therefore by the express words of this Act the ball of the foot of the Mastiff is not to be cut off, but the three claws of the forefoot to the skin. This extendeth only to Mastiffs, and to no other Dogs, for Ubi non est lex, ibi non est transgressio; and necessary it is, that such as dwell in Forrests where there are covertes, that they should keep other Dogs unerpeditated, and the Mastiff expeditated for the defence of their house, or for giving of warning of Thieves and Robbers, &c. Molossus (the old British word) is a Male-thief, because he doth mase or amase a Thæf, &c.

M. S. Priorat. Co-  
vent' fo. 14.b.

¶ Managium & mesuagium, is commonly in ancient Records taken for mesuagium.

The words of this Act are De expeditatione Canum existentium in foresta, and therefore in purliens or places deafforrested, a man may keep a Mastiff without being expeditated. And that I may say it once for all, my intencion is chiefly to explain the obscure words of this Statute of Carta de Foresta, and other Acts, and leave the Reader to the text it self being plain: for, Satius est petere fontes, quam sectari rivulos.

13 R.2.c.13. 19 H.  
7.c.11. 1 Jac.c.27  
3 Jac. c.13. Assisa  
Forest'.

Who may keep Greyhounds or other Dogs to hunt, or Ingens, &c. either in a Forrest, or out of the Forrest, appeareth by divers Statutes.

But if Greyhounds be found running ad nocumentum, the Forrester ought to retain them, and present them in the presence of the Verderers, and send them to the King, or to the Chief Justice of the Forrest.

We find not that any Chapter or Article of Carta de Foresta, doth extend to Chases or Parks, but only the 11 Chapter. Quicunque Archiepiscopus, Episcopus, Comes vel Baro ad mandatum nostrum transierit per forestam nostram, &c. which Chapter doth not only extend to the Forrests of the King, but to his Chases and Parks also, for so was the Law before the making of this Act which is but in affirmance of the Common Law of the Forrest before this Act.

1. In respect of the persons, for every Lord of Parliament, be he Spiritual or Temporal, had this priviledge besides those that be named in this Chapter, as such Abbots and Priors, as were Lords of Parliament, and so of Dukes, Marquesses, and Viscounts, which were erected and created, afterwards being Lords of Parliament have the same priviledge also.

8 E.3. Itin. Pick. f.  
134 A Forester or  
any other Officer  
of the Forrest can-  
not give a Noble-  
man a course in  
the Forrest but it  
is presentable.

2. By reason of the kind of commandment ad mandatum nostrum, saith the Statute, which words have reference to the Writ of Parliament directed to every Lord of Parliament. Ideo vobis mandamus, &c. and is a legal commandment by Writ directed severally to each and every Lord of Parliament to appear at the Kings Court of Parliament, &c. to treat de arduis & urgentibus negotiis Regni, statum & defensionem Regni & Ecclesiæ Anglicanæ concernentibus, and to recreate themselves veniendo, and after redeundo, they may passing by any of the Kings



Kings Forrests, Chases, or Parks, hunt and kill one or two of the Kings Deer. The Lords of Parliament may do it at other times ex gratia, but by Law eundo & redeundo, to and from the Parliament.

3. Here is implied that the Lord of Parliament may in the absence of the Forrester or Keeper after the blowing of the horn, kill one or two of the Kings Deer, propriis suis canibus aut arcu suo proprio.

4. Here is a secret conclusion of Law, that albeit spiritual persons are prohibited by the Canon Law to hunt, yet by the Common Law of the Land they may for their recreation, to make them fitter for the performance of their duty and office, use the recreation of hunting, as here it directly appeareth: And in *Affisa Forestæ* 6 E. 1. it appeareth that the Abbot of Peterborow had a right of hunting in the Forrest of Rockingham. And this appeareth in other Statutes, viz. 13 R. 2. 19 H. 7. 1 Jac. And at this day, and time out of mind, the King hath had after the decease of every Archbishop and Bishop (inter alia) *Mutari suam canum*, &c. his Kennel of Hounds, or a composition for the same, which and other things are in the Exchequer called *multa*.

5. The last conclusion is, that all Canons against the Laws or Customs of the Realm, are void and of none effect.

*Linwood de Venatore Clerico*, &c. *Cart. de Foresta* cap. 11. *Affisa forestæ*. 6 E. 1. 13 R. 2. cap. 13. 19 H. 7. cap. 11. 1 Jac. ca. 27. *Muta canum* is derived from the French word *muire de chiens*. See 25 H. 8. cap. 19. &c.

### ¶ Of the drifts of the Forrests, *Agitatio Animalium in Foresta*.

The drifts of the Forrests are said to be when all the Cattle as well of Commoners as of Strangers are driven by the Officers of the Forrest to some certain Pound or place inclosed, and the end hereof is threefold, viz. First, to see whether those that ought to common do common with such kind of Cattle as by prescription or grant they ought. Secondly, if they common with such Cattle as they ought, whether they do surcharge or no. Thirdly, if the Cattle of any Stranger be there which ought not to common at all.

By the Statute of 32 H. 8. it is enacted, That all Forrests, Chases, Commons, Moors, Heaths, and waste grounds within the Realm of England and Wales, and the Marches of the same, and every of them shall be driven at the Feast of St. Michael the Archangel next coming or within 15 days then next after, and so yearly to be driven by the Lords, owners, and possessors of the said Forrests or Chases, or by the Officers of the same, and by the Constables, Headboroughs, Bailiffs, Bursholders, and Tithingmen, within whose offices, precincts, and limits the Commons, Moors, Marishes, Heaths, and waste grounds being out of the Forrests and Chases be or lie upon pain of xl s. to be forfeited to our said Sovereign Lord the King by every of the said Officers, Bailiffs, Constables, Headboroughs, Bursholders and Tithingmen; as often, and at every time as the said drift shall be omitted, or left undone, or not effectually done within 15 days after the said Feast of St. Michael the Archangel, as is aforesaid. And it shall be also lawful to the Lords, owners and possessioners of the said Forrests and Chases by their Officers of the same, and by the Constables, Bailiffs, Headboroughs, Bursholders and Tithingmen and every of them within the limits of their offices to make like drift of the said Forrests, Chases, Commons, Moors, Marishes, Heaths, and waste grounds at any other season and time of the year whensoever, and as often as they shall think meet and convenient.

Out of this Act of Parliament, as to the drift of the Forrest or Chase, these 5 conclusions are to be observed. 1. By what persons this drift is to be made, and therein if the Forrest be in the Kings hands it must be made by all the Kings

51

Officers



Officers of attendance in the Forrest, and by four men and the Reeve of every Town within the Forrest, who to that purpose are included under the name of Officers. And if they be in a subjects hands, then either by the owners or possessors of the said Forrests or Chases, or by such Officers as is before said. 2. At what certein time such drift in Forrests or Chases is to be made? It appeareth by this Act that it ought to be effectually done yearly within 15 days after the Feast of St. Michael the Archangel. 3. The said drift may be made at other season or time of the year whensoever, and as often as they shall think meet and convenient. 4. That stoned Horses under 15 handfuls high are prohibited to Common in any Forrest. See the Statute. 5. For Commons, &c. out of any Forrest or Chase. In these words are included Purlicus and other grounds wherein men have Common, and these are to be driven by the owners and possessioners of the same, and by the Constables, Headboroughs, Bailiffs, Tithingmen, and Tithingmen, within whose offices, precincts, and limits the said Commons, &c. being out of any Forrest or Chase, do lie at such times as are aforesaid.

Ayerles of Hawks:  
8 E. 3. Itin. Pick.  
Sir John de Mel-  
facs case.

29 H. 8. tit. Offi-  
cers, Br. 47.

The Statute speaketh De Aeris Accipitrum, Espervorum, Falconum, Aquilarum, & Hieronum, which is but in affirmance of the Common Law, for it extendeth to Ayeries of other Hawks then be specially named, as to Ayeries Merleonorum in boscis suis de Levesham.

A forrester by Patent for his life is made Justice in Cire of the same forrest hac vice, the Forresterhip is become void, for these offices be incompatible, because the Forrester is under the correction of the Justice in Cire, and he cannot judge himself: the same Law is of a Warden of a Forrest and of a Justice in Cire of the same Forrest: Though the offices of the Steward and Justice of the Forrest be both judicial, yet whether he be Steward of the Swanimote, or of the Cire, he is under the correction of the Justice in Cire, and therefore incompatible.

We have ben requested to set down what persons and what Officers either that then were, or which have ben since the last Cire, and how many sorts of Officers, and what number do belong to a Forrest, which we cannot better resolve and satisfie, then by the Records of the Cires of Forrests, and specially by the Writ of Summons of those Cires, which we have thought good to set down verbatim, not only for answer to the said questions, but for divers other observations, as we find it in the said Cire of Pickering with the exact and parricular return of the same.

Vic' Eborum.  
The persons that  
ought to appear  
before the Justices  
in Cire of the For-  
rest, &c.  
Foresta Hen.  
Com. Lanc'.

\* Under these  
words are inclu-  
ded the Constable  
of the Castle, the  
Warden, the Ran-  
ger, the Agisters,  
the Steward, the  
Bow-bearer.

\* Four great learn-  
ed men Justices in  
Cire of the Forrest.

\* See Cart. de  
Forest. cap. 2.

*Edwardus dei gratia Rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ  
Vic' Eborum Salutem. Summon' per bonos summonitores Archiepiscopos, E-  
piscopos, Abbates, Priores, Comites, Barones, Milites, & omnes liber' tenentes,  
qui terras seu tenementa habent infra metas Forestæ dilecti consanguinei &  
fidelis nostri Henrici Com. Lanc. de Pick. in Com. prædict. & de qualibet  
Vil. ejusdem Com. infra metas ejusdem Forest. existen. quatuor homines &  
Præpositum & Forestar' Villarum, & \* omnes alios, qui coram Justiciar. ad  
placita Forestæ venire solent & debent, quod sint apud Pickering die Lunæ  
prox. post Fest. S. Michaelis prox. futur. coram dilectis & fidelibus nostris  
Ricardo de Willoughby, Jo. de Shardelowe, Roberto de Hungerford, &  
Johanne de Hambury, tribus vel duobus eorum quos ad requisitionem dicti  
consanguinei nostri constituimus Justic' ad itinerandum hac vice ad Placita  
Forestæ ipsius Comitis in Com. prædict. a tempore quo Edmundus nuper  
Com. Lanc. pater præd. Henrici, cujus hæres ipse est, Placita Forestæ in ea-  
dem Foresta virtute \* concessionis sibi per dominum E. nuper regem Angliæ  
Avum nostrum inde fact. ultimum tenuit, auditur & factur' præceptum no-  
strum de hiis quæ ad placita præd. pertin'. Fac. etiam venire coram Justic'  
prædictis omnes Forestar', Viridiar', & omnes illos qui fuer' Forestar' &  
Viridar' Forest' prædict' in Com' prædict' post ultima placita prædict' cum*

Forestar' Viridar'

omni-



omnibus attachiament' suis tam de Viridi quam Venatione quæ post ult. Placita Forestæ sunt emersa & nondum terminat' (viz.) tam de illis Attachiamentis quæ manent infra metas Forestæ, quam de illis quæ manent extra Forest': Fac etiam venire coram eisdem Justiciariis tribus vel duobus eorum regardatores ipsius Comit' in balliva tua, Ita quod habeant ibi omnia Regarda sua sigillis suis signat' & omnes Agistatores præfat' Com. in eadem balliva sua cum omnibus Attachiament'. Et habeas ibi Sum' & hoc Breve. T. me ipso apud Westm. 17 die Augusti, Anno regni nostri 8.

To what end the Officers are summoned.

Ad quod breve Petrus de Saltmersh Vic. Eborum retornavit quod fecit plenum retornum istius brevis Hugoni de Nevill ballivo libertatis H. Comit' Lanc. Honor. de Pickering, cui executio istius brevis restat faciend'; qui sibi respond. quod summon. fecit Archiepiscopos, Episcopos, Abbates, Priores, Comites, Barones, Milites, & omnes libere tenen. qui terras & tenementa habent infra met. Forest', & de qualibet Vill. ejusdem Com. infra metas ejusdem Forest'. existen. quatuor homines & Præposit. & Forestar. Villar', & omnes alios qui coram Justiciar' ad placita venire solent & debent, quod sint apud Pickering ad diem in Brevi prædict. content. coram præfat. Justiciar' tribus vel duobus eorum, auditur. & factur. præcept. domini Regis de hiis quæ ad prædict' placita pertinent, Et quod venire fecit Forestar', Viridar', & omnes illos qui fuer' Forestar', & Viridar' Forest. præd. in balliva sua post ult. placita præd. cum omnibus Attachiamentis præd. tam de Viridi quam de Venatione quæ post ult. placita Forestæ sunt emersa & nondum terminat. Et etiam quod venire fac' coram eisdem Justic' tribus vel duobus eorum Regardatores ipsius Comit' in balliva sua, ita quod haberent ibi omnia Regarda sua sigillis suis signat' & omnes Agistatores præfat. Comit' in eadem balliva sua cum omnibus agistamentis prout patet in retorn. schedula sua prædicto attachiata.

Regardatores

Nota, the punctual and direct answer to all the points of the Writ:

Willielmus de Percehay Miles.

\* Petronilla de Kynthorpe, & po. lo. suo Edmundum de Hastings ad omnia faciend' quæ Forestar' incumbunt durante Itinere, & fecit sacramentum.

Forestar' de feodo in le Westward  
istius forestæ de Pickering, viz.

Forestar' Custod. Forestæ in le  
Eastward, viz.

Rogerus de Leicester.  
Hugo de Yeland.  
Willielmus le Parker.

\* Viridar' Forestæ de  
Pickering, viz. Robertus Thurnese.  
Rogerus Browne.  
Robertus Playce.  
Jo. de Kilwardbye.

Regardatores  
Forestæ de  
Pickering. Willielmus de Everly.  
Rogerus de Lone.  
Johannes Boye.  
Johannes filius Alani.  
Galsfridus de Kynthorpe.  
Thomas Thurnese.  
Hugo de Nevill.

Rogerus de Alveston.  
Johannes filius Galsfridi.  
Rogerus de Stapleton.  
Rogerus Strutcocke.  
Radulphus de Colloughton.  
Johannes de la Chemnie.

\* Nota, A woman that is a Forrester in fee cannot execute the office herself, but she may make a Deputy during the Eire, and her Deputy shall be sworn, &c. By Carta de Foresta cap. 7. Tor Forresterii ponantur ad Forestas custodiend' quot ad illas custodiend' rationabiliter viderint sufficere.  
\* Viridarii 4.

Regardator' 13.  
By the Statute de Carta de Foresta cap. 7. there are to be 12 at the least, and, as here it appeareth, there may be more.



Agistatores 4.

Agistatores in le Westward istius Forestæ } Johannes Dringe.  
 Ricardus Russell.  
 Agistatores in le Eastward istius Forestæ } Willielmus de Roston.  
 Willielmus Russell.

Nomina Forest' &amp; Viridar' qui fuerunt.

Nomina Forestar' nunc istius Forestæ, & eorum qui fuerunt Forestar' istius Forestæ, & eorum qui fuerunt Viridar' istius Forestæ.

Alanus de Newton } Capital. Forestar. Willielmi de Perchebay unius  
 Johannes de Wardesden. } Forestar. de Feodo Forestæ de Pick. in le Westward ibidem.

Henry de Ripley } Capital. Forestar. Petronilla de Kinthorp alterius Fo-  
 Thomas de Dalby. } restar. de feodo Forestæ de Pickering.

David de Neuton } Capit. Forestar. Hugon. de Yeland For. Custodis Fo-  
 Thomas de Rippley } restæ in le Eastward.

Nomina Subforestariorum Forestæ prædict'

Subforestarii 8.

Johannes de Harley. Johannes Munmewe. Forestar. Radulphi  
 Ricardus de Aleintostes. Johannes Scot. de Hastings Cu-  
 Willielmus Gower. Willielmus Courtman. stod. Forestæ præ-  
 Ricardus de Helmesly. dict. nunc.

Nomina subforestar. qui fuer. in Foresta ista post ultimam Iter, &c.

Galfridus de Hawly. Johannes Rounceby. Adamus fil. Willielmi.  
 Robertus de Wigan. Rogerus fil. Nich. Johannes de Nevil.  
 Petrus Lilly. Alanus fil. Radi. Thomas de Newton.

Viridar'.

Bernardus de Bergh, qui obiit, fuit Viridar' in Foresta ista, & Alexander de Bergh filius ejus & hæres venit & reddidit rotulos suos tam de viridi quam de venatione tangen' Forestam istam de tempore prædicto.

The Law of the Forrest is, that if a Werdere or dye, his heir is to bring in the Rolls of his Ancestors time, which if he do, then the Entry is ut supra.

Adam de Bruis qui obiit fuit Viridar' in Foresta prædict' & nullus est qui venit ad Rotul. reddend', Ideo Vic. seisir' fac. omnia terras & tenementa quæ fuer. præd. Ade quousque, &c. Postea venit Willielmus B. filius ejus & hæres, & fecit finem pro Rotulis prædictis, & admittitur per 40 s. prout patet in Rotul. de extractis.

If the Werdere or alien his Lands or die seised, and no man bringeth in the Rolls, then shall the Land by the Law of the Forrest be seised by the Sheriff, which the Werdere had, until the Rolls be brought in, and if the Rolls be lost, then till he make his fine and have his Ouster le main, and the Entry is, as is next above.

Ricardus de Shelton, qui obiit, fuit Constabular' castr' præd. & custos istius Forest', & nullus est qui venit ad rotul' & munimenta ist. Forest. tangen. reddend', Ideo veniant ejus terr' & tenementa tenentes ad respondend', &c.

At



If the Warden of the Forrest dye, and his heir, or Tertenant bring not in the Rolls, &c. his heir or Tertenant shall answer for the same.

And here it is to be observed, that where the Forrest of Pickering was appendant or belonging to the Castle of Pickering, that he that is the Constable of the Castle is ever by the Law of the Forrest Chief Warden of that Forrest. And so it is of the Forrest of Windsor belonging to Windsor Castle, of the Forrest of Rockingham belonging to the Castle of Rockingham, and all other Forrests belonging to Castles. And accordingly here you may observe, that the office of Constableship and Wardenship are in this Record conjoynd one with the other.

*Philippus de Monte Gomeri qui sequitur pro Domino Rege, petit vers. Radulphum Quintyn Ballivam custodiæ liberæ Hayæ Regis de Alrewas quæ pertinet ad Serjantiam Regis Seneschall' Forestæ Regis de Canoco, & quæ ab eadem Serjantia alienata est sine assensu prædecessorum Regis Regum Angliæ. Et Radulphus venit, & per licentiam reddit Domino Regi inde seisinam suam, &c.* Trin. 14 E. 1. in banco Rot. 7. Staff.

The duty of a Woodward doth appear by his name, and by his oath. Nomina Custos forestarum sunt notæ rerum.

Hil. 13 E. 3. it is thus resolved: Quilibet Woodwardus secundum Assisam Forestæ debet portare hatchettum, & non arcum & sagittas pro sinistra suspitione venationis deponendū ad præsentandū tam de viridi quam de venatione. Et videtur Justic' hic & Concilio Regis quod \* Capreoli Anglicè Roes, sunt bestię de Warrena & non de Foresta, eo quod fugant alias feras.

C Bedellus is an Officer of the Forrest, that doth warn all the Courts of the Forrest, and doth execute the Process of the Forrest, and make all Proclamations as well within the Courts, as without; and is derived of the Saxon word Byder, to call or warn, or of the French word in Normandy Bedeau, a Bailiff or Apparitor.

C A Master of the Game of the Forrest.

C Mensis veritus, fence month, or defence month, so called, because it is the fawning month, when the Does have Fawns, for the preservation whereof they ought to be fenced, and defended from hurt and disquiet. It containeth a month containing 31 days, and beginneth in the 15 day before Midsummer (that is, the Nativity of St. John Baptist) in the beginning of which a Swanimote is to be holden, and endeth 15 days after. See the Statute of Carta de Foresta, c. 8. whereby it is enacted, quod tertium Swanimotum teneatur in initio 15 dierum ante festum Sancti Johannis Baptiste, quando Agitatores nostri conveniunt pro \* faonatione seu feonatione bestiarum nostrarum.

This word faonatio or feonatio, is derived of the French word faonier, that is, to fawn, or for Does to bring forth, &c.

a See Rot. Parl. 18 E. 1. fol. 3. nu. 37. the punishment of a Forrester for doing trespasss in the Forrest.

b If the King or other Lord doth pardon a trespasss in a Forrest, and the offender at a Justice seat by his learned Council plead the same; in the proceeding thereupon we do observe two things. First, That by the Law of the Forrest, before any allowance thereof, the Justices charge the Ministers of the Forrest to enquire whether the delinquent hath done any trespasss in the Wert or Wensson after the Date of the pardon. Secondly, When the pardon is allowed, then the entry is, Quod invenit manucaptos quod amodo non forisfac', i. non delinqueret aut peccaret. c But if an offender be convicted for trespasss in the Forrest in hunting, &c. and adjudged to be fined or imprisoned, which fine, though it be paid, yet shall he find sureties for his good abearing, &c. in these words: d Quod amodo se bene geret, & in Foresta prædicta non forisfac', i. non delinqueret seu peccaret. Unde forisfactura pro delicto.

e By the absence or non venue of the Justices in Cir at the day of the adjournment, the Justice seat is discontinued, and how and by what means it may be recontiz

Hil. 13 E. 3. Coram Rege Rot. 102. Eborum. 8 E. 3. Itin. Pick. acc. \* Roe-bucks, Capreoli.

16 E. 3. fol. 1. a. Cart. de Foresta cap. 8.

\* The printed book is venatione, which ought to be amended, and made faonatione or feonation, which signifieth the fawning.

a Rot. Parl. 18 E. 1. fo. 3. nu. 37.

b 8 E. 3. Itin. Pick. Sir Ralph Hastings case.

\* This is the word of Carta de Foresta cap. 10.

c Ibidem Rob. Saltmerthes case.

d Carta de Foresta cap. 10.

e 8 E. 3. Itin. Pick. of William de Persey, and William de Kynthorp fo. 165.



7 R. 2. cap. 3.

recontinued and resummoned, it appeareth in 8 E. 3. Itinere Pickering.

No Jury shall be compelled by any Officer of the Forrest or any other person whatsoever, to give their verdict in any other place, then where their charge is given, against their good will, nor by malice, menace, or other duress shall be constrained to give their verdict of a trespass in the Forrest, otherwise then their conscience will clearly inform them. This Law extendeth to Forrests only.

Albeit there be some beasts that be no beasts of Forrest, as the Buck, &c. and some Beasts and Fowls that be no Beasts and Fowls of Warren, yet if any man hunt or hawke at them within the Forrest, it is against the Will of the Forrest, and punishable by the Laws of the Forrest, for all manner of hunting or hawking there without warrant is unlawful, because it disquieteth the beasts of the Forrest.

Carta Regis H. 1. civibus London'.

\* Nota, the Citizens of London had this privilege before this Charter.

42 E. 3. 2. a. in Tran's.

We read that King H. 1. by his Charter granted, Quod Cives Londonie habeant fugationes suas ad fugandum sicut melius, & plenius habuerunt \* antecessores eorum, scilicet Silre, & Middlesex & Suer.

The King being seised of a Forrest, did grant the Forrest to another in fee, the grantee shall have no Forrest, because he hath no power to make Justices and Officers of Forrest to hold Courts, &c. but yet though it cannot take effect ex vi termini, as a Forrest, yet together with the Game the same shall pass as a free Chase for the Savages and Conies; for as hath been said, every Forrest is a free Chase, & quiddam amplius.

Regist. 8. b.

Chace est ad communem legem, and is not to be guided by the Forrest Laws, and so are Parks.

See the first part of the Institutes, Sect. 1. verb. Tres ou ten's.

But if the King doth grant a Forrest to a Subject, and granteth further that upon request made in the Chancery, he and his heirs shall have Justices of the Forrest, then the Subject hath a Forrest in Law, as the Duke of Lancaster had the Forrests of Pickering and Lancaster, and the Abbot of Whitby had the Forrest of Whitby in the County of York, which being not understood, hath been the cause that Readers and others have erred. Vide 12 H. 7. Kelw. 13. & 14. & c. 4 E. 3. 55. Malins case. 2 H. 6. 15. Forest. de Exmore. 27 H. 8. c. 7. 1 E. 3. c. 2. 22 E. 4. cap. 7. 32 H. 8. c. 13.

Mich. 18 E. 1. in Banco Rot. 155. Eborum.

Ricardus de Cornubia & 9 alii attach. fuerunt ad respondend' Johanni de Sallaye quare ipsum ceperunt, & in prisona detinuerunt per decem septimanas apud Castrum de Knaresburgh, &c. Ricard' & alii dicunt quod Castrum & Honor de Knaresburgh, cum Foresta de Bestaine fuit aliquando in seisinâ Dom' H. Regis, patris Domini Regis nunc, & eo tempore fuit talis consuetudo in Foresta prædicta, quod si quis indictatus fuerit per Forestarios coram Seneschallo ejusdem Honoris de transgressione de venatione facta in eadem Foresta, idem Seneschallus tales transgressores ubicunq; fuerint inventi infra eandem libertatem prædicti Honoris, licite potest arrestare & imprisonare, & eos in prisona detinere quousq; satisfecerint de transgressione, &c. Qui Rex Hen. dedit prædict' Honorem cum Foresta, &c. Ric' fratri suo Com' Cornub' patri Edmundi Com' Cornub' qui toto tempore suo usus est tali libertate arrestandi, &c. Johannes e contra dicit, nullam talem fuisse consuetudinem arrestandi malefactores, nisi quando capti fuerunt cum manuopere, & hoc ab antiquiore tempore quia idem Comes non habet ibidem Forestam, sed Chaceam tantum. Et quod tempore Will. de Stotewill Dom' dictæ Chaceæ qui dedit Regi J. dictam Chaceam, & tempore dicti Regis J. & tempore Regis H. patris, cum dicta Chacea fuit in manu sua, nunquam arrestaverunt aliquos de transgressione in Chacea illa, nisi illos qui capti fuerunt cum manuopere, & hoc offert verificare per patriam, &c. Ricardus dicit quod non possunt prædictam verificationem sine prædicto Com' verificare. Ideo præc' est vic' quod sum' prædict' Com', &c. Consimile placitum & consimilis responsio in eodem Rotulo. Item al' in Rot' 163.

By the grant of a Forrest a Chase passeth.

Nota, capti cum manuopere.

King



King R.2. granted to Thomas Duke of Gloucester in special tail, the Castle of S. Brionel, and the Forrest of Dean, (whereby nothing passed as hath been said, but a Franck Chase) now by authority of Parliament it is enacted, that the said Duke should hold the said Forrest as a Forrest, and to constitute such Justices and Officers, &c. as belong to a Forrest. Rot. Parl. 14 R.2. nu. 13.

But what was the title of the Courts of Cir of Forrest in the hands of Subjects? The answer, taking one example of the Forrest of Pickering in the hands of Henry Earl of Lancaster; Placita Forestæ Henrici Comitis Lanc' de Pickering tenē apud Pickering coram Ricardo de Willowby, Jo. de Shardelowe, Roberto de Hungerford, & Johanne de Hanbury, Justiciariis ad itinerand' hac vice, ad placita Forestæ prædictæ in Corn Eborum assignat' die Lunæ prox' post festum Sancti Michaelis, Anno regni Regis E.3. post Conquestum 8.

If any felony be committed within the Forrest, it shall be inquired of before the Judges of the Common Law, and doth not belong to the consuance of the Chief Justice of the Forrest. 12 E. 3. coron. 119 Felonia.

Mich. 9 E.1. coram Rege Rot. 6. Huntingdon. Transgressio in foresta Regis pro Venatione Regis non est hic terminanda. Transgressio.

Nota, Before Scroope and other Justices in Cir, according to the course of the Common Law, a man claimed to be quit of pawnage in the Kings Forrest, and also he claimed in the same Forrest pawnage of his tenant pur agistes; and for that this belonged to the Justices of the Forrest, they would not meddle with it. And the reason of that is, the words of the Statute of Carta de Foresta, c. 16. Præsententur capitalibus Justiciariis nostris de Foresta, cum in partes illas venerint, & coram eis terminentur. So as the termination and ending thereof belongeth to the Chief Justices of the Forrest, by the express words of the Statute. And where the Statute saith, Coram capitalibus Justiciariis nostris, &c. It is to be known, that there is but one Chief Justice of the Forrests on this side Trent, and he is named Justiciarius itinerans forestarum, &c. citra Trentam. And there is another Capitalis Justiciarius, and he is Justiciarius Itinerans omnium forestarum, &c. ultra Trentam; who commonly is a man of greater dignity then knowledge in the Laws of the Forrest. And therefore when Justice seats are to be holden, there be associated to him such as the King shall appoint, who together with him shall determine omnia placita, &c. forestæ, with a Patent of Si non omnes, and a Writ De admittendo, &c. And the Chief Justice of the Forrest, and these associates, are Capitales Justicarii forestæ, and named Capitales in respect of the Verderers and others, that to some purposes (as hath been said) have inferior judicial places. V. Cartam de Foresta cap. 16. Temps E.3. Kelw. 150. b. V. 21H.7.22. & 39

For these associations and other Writs see a notable president 8 E.3. Itin. Pick. in the case of William of Perlay, &c. fol. 165.

And seeing, as it hath before appeared, the Forrest Laws differ in many cases from the common Laws of England, it is good reason they should be determined before men learned in the Laws of the Forrest, as in other cases. As if a trespass be done either in Wert or Wenison in any Forrest in the hands of a Subject, in the life of the ancestor, Lord of the Forrest, it shall be punished in the life of the heir. But so it is not in the Chases or Parks of a Subject, for by the Common Law Actio personalis moritur cum persona.

If a man committed a trespass in a Forrest, and dye, by the Forrest Law the trespass is unpunishable, agreeable to the rule of the Common Law. 8 E. 3. Itin. Pick. Hugh Latimers case.

But by the Statute of 19 H. 7. he that shall stalk with any bush or beast in any Park, Chase, or Forrest, without license, &c. shall forfeit for every time he so stalketh x l. to any person that will sue for the same by action of debt, wherein no wager of Law, protection, or esoin shall be allowed, and two Justices of Peace may examine the same, &c. See the Statute of 1 H.7. c.7. See the third part of the Institutes, cap. Felony. 19 H. 7. cap. 11. In this Act see the great penalty for keeping of Ners called Deer hayes and Buck-stalls by any that hath not any Forrest, Park, or Chase.

\* If a Forrestership or a Bailiwick of a Forrest be granted in fee, if it be found out at an Cir for the Forrest, that the grantee hath misdone in his Bailiwick, the Bailiwick is forfeited. Nota, The Justices in Cir have power to enquire thereof. In these offices of Forresterships or Bailiwicks in fee within a Forrest, albeit they have an absolute fee simple therein, yet are they of such trust, that they \* 26 Aff. p. 60.



Register fo. 257.  
F. N. B. 226.

For the beasts of Chase and Warren, and Fowls of Warren being not proper to this Treatise, see the first part of the first part of the Inst. Sect. 378. Rot. Parl. 18 E. 1. nu. 20.  
\* *Lutra animal amphibium.*

they cannot be granted over without the Kings license, and before such license be granted, there goeth out a Writ of Ad quod damnum to the King, if such license shall be, &c.

There be many beasts of the Forrest by the Laws of the Forrests of England. The Hart in Summer, the Hind in Winter, and all that proceed as of them: the Buck in Summer, the Doe in Winter, and the proceed of them: the Hare male and female, and their proceed: the wild Boar male and female, and their proceed: and the Wolf male and female, and their proceed: the Fox male and female, and their proceed: the Martin male and female: Capreolus the Roe, as it appeareth before, is no beast of the Forrest, but it is a beast of Chase.

But I find that in 18 E. 1. John de Claret was amerced in 100 l. pro uno cervo & duobus \* lutris captis in foresta de Pek, and he petitioned to the King in Parliament to be discharged thereof and was denied. Yet I take an Otter is no beast of the forest: but all hunting in the forest, as hath been said, is unlawful.

The proceeds of the Hart and Hind. The Male the first year a Calf, the second a Brocket, the third a Spawad, the fourth a Staggar, the fifth a Stag, the sixth a Hart, and so after. The female, the first year a Calf, the second year, a Brockets sister, the third year a Hind.

The proceeds of the Buck and Doe. The first year a Fawn, the second year a Pricket, the third a Sozel, the fourth a Soze, the fifth a Buck of the first head, the sixth a great Buck.

The proceeds of the Hare, the first year a Leveret, the second a Hare, the third a great Hare. Of a Wild Boar: a Pig, a Hog, a Hog-spear, a Boar, and after a Sanglier.

The seasons by the Law of the Forrest for the Beasts of the Forrest are these. Of the Hart and the Buck, beginneth at the feast of S. John Baptist, and endeth at Holy-Rood day. Of the Hind and Doe, beginneth at Holy-Rood and continueth till Candlemas. Of the Fox at Christmalls, and continueth till the 25 of March. Of the Hare, at Michaelmas, and lasteth till Midsummer. Of the Boze, from Christmalls till Candlemas.

In the Statute of Carta de foresta in divers places Venatio signifieth Venison in French Venaïson, and so in effect in Dutch and other Languages. It is called Venison or Venaïson, of the mean whereby the beasts are taken, quoniam ex venatione capiuntur, and being hunted are most wholsome. They are called beasts of Venary (not Venery as some term it) because they are gotten by hunting. No beast of the Forrest that is solivagū & nocivū is Venison, as the Fox, the Wolf, the Martin, because they be no meat, but caro eorū est nociva: A fortiori, the Bear is no Venison not only because he is Animal solivagū & nocivū, but because he is no beast of the Forrest, and whatsoever is Venison must be a beast of the Forrest, sed non è converso. On the other side, Animalia gregalia non sunt nociva, as the \* wild Boar; for naturally the first three years he is Animal gregale, and after trusting to his own strength, and for the pleasure of man becometh solivagū. He is then called Sanglier, because he is singularis, but he is Venison and to be eaten. The Hare is Venison also, which the Poet preferreth before all others:

Inter quadrupedes gloria prima lepus.

So as the Red-Deer, the Fallow-Deer, the wild Boar, and the Hare, are Venison. Whereupon these two conclusions in the Law of the Forrest do follow. First, whatsoever beast of the Forrest is for the food of man is Venison, and therewith agreeth Virgil, describing a feast.

Implentur veteris Bacchi pinguisque ferinx.

They had their belly full of old wine, and fat Venison. So Venison was the principal dish of the feast.

2. Whatsoever beast of the Forrest is not for food of man is no Venison. Therefore Capreolus being no beast of the Forrest, as hath been said, is not by the Law of the Forrest Venison, for though it be food and taken by hunting, it is no Venison. Nature hath endued the beasts of the Forrest which are Venison with two qualities, swiftness and fear, and their fear encreaseth their swiftness.

Pedibus

Cart. de foresta, cap. 8. 10. 16. &c. And so it is taken 1 Reg. c. 4. ver. 21. Venatio Cervorum, the Venison of Harts.  
a Ordinatio forestæ, cap. 1. 5. Aristotle.

Aristotle.  
\* Sanglier, quia singularis.

Martial.  
Deer à Sg. Græc. i. fera bellua  
κατ' ἑορξὴν  
and their flesh is called Caro Ferina.



-----Pedibus timor addidit alas : but yet the Dærs are the most fearful.

Dente tuetur aper, defendunt cornua taurum,  
Imbelles Damæ quid nisi præda sumus ?

*Martial.*

Having spoken somewhat de Venatione, it followeth that we should say something de Viridi, because the Statute saith, Tam de Viridi, quam de Venatione, and other Statutes speak of Wert and Wenison.

\* Viridis, Grænhue, à viriditate, the French calleth it Werd, and we Wert, whatsoever beareth græen leaf, but specially of great and thick covertis. And Wert is of divers kinds, some that beareth fruit that may serve as well for food of a man as of beasts, as Pear træs, Chestnut træs, Apple træs, Service træs, Put træs, Crab træs, &c. and for the shelter and defence of the Game : some called Haut-boys, serving for food and browse of and for the Game, and for the defence of them, as Oaks, Beches, &c. Some Haut-boys, for browse and shelter and defence only, as Ashes, Poples, &c. Of Sub-boys some for browse and food of the Game, and for shelter and defence, as Haples, &c. some for browse and defence, as Firch, Sallow, Willow, &c. some for shelter and defence only, as Alder, Elder, &c. Of bushes and other vegetables, some for food and shelter, as the Hawthorne, Blackthorn, &c. some for hiding and shelter, as Brakes, Gorse, Heath, &c. To sum up all, Plantarum tria sunt genera : Arbores, Arborecentes, & Herbæ. Arbores, as Haut-boys, & Sub-boys. Arborecentes, as Bushes, Brakes, &c. Herbæ, as Herbs and Wæds, which albeit they be græen, yet our legal Viridis extendeth not to them.

A Viridi cometh, as hath been said, Viridarii, because their office is to see to the preservation of Wert, which in troth is the preservation of Wenison. The Poet speaking to the træs, saith,

Quercus es in sylvis pulcherrima, Pinus in hortis,  
Populus in fluviis, Abies in montibus altis.

See for the punishment of trespasss done de Viridi, either in the Kings woods, or in the woods of the Subject, Consuetud<sup>s</sup> & Assis<sup>s</sup> Forest<sup>s</sup>, ubi supra.

The Philosophical Poet in describing the most delightful pleasures of woods, &c. and Græen hue, saith,

Devenere locos lætos, & amæna virêta  
Fortunatorum nemorum, sedesque beatas.

*Virgil.*

And because it should be hard and difficult that any man should hunt and kill the Kings Dærs in his Forrest and pass away without discovery, unless there were Procurers, Plotters, Assistors and Receivers : By the Law of the Forrest, whosoever receiveth within the Forrest any such Malefactor either in hunting or killing, knowing him to be such a Malefactor, or any flesh of the Kings Wenison, knowing it to be the Kings ; in this case he is a principal trespasser, wherein the Law of the Forrest differeth from the Common Law, for by the Common Law he that receiveth a trespasser and agreeth to a trespass after it be done, is no trespasser, unless the trespass was done to his use, or for his benefit, and then his agreement subsequent amounteth to a commandment, for in that case, Omnis rati-habitio retrahitur & mandato æquiparatur, but by the Law of the Forrest such a Receiver is a principal Trespasser, though the trespass was not done to his use, as well as the Procurers and Plotters ; but by the Common Law in case of Felony such a Receiver is but an Accessary. But in the case abovesaid, if the receipt be out of the Forrest, he cannot be punished by the Law of the Forrest, because it is out of the jurisdiction of the Forrest, which jurisdiction is local. And seeing the jurisdiction of the Forrest is local, the Law of the Forrest hath provided, that the Forrest should be inclosed by metes and bounds, which indeed are the inclosure of the Forrest : for as Parks are inclosed with wall, pale or hedges, so Forrests and chales are inclosed by metes and bounds ; and as a Park cannot be a Park without such an enclosure in deed, as is abovesaid, so it can be neither Forrest nor

De viridi, viretum  
viretum, &c.

Cart. de Forest.

cap. 8. 16.

1 E. 3. cap. 8.

\* Consuet. & Assisa

de Forest. 6 E. 1.

cap. 1. 20. 21.

Hil. 13 E. 3. Coram

Rege Rot. 103.

Virgil. Iur in an-

tiquam sylvam sta-

bula alta ferarum.

a Deut. 20. v. 19.

b Consuet. & Assisa

Forest. 6 E. 1. c. 2.

& 20.

¶ Of Principal and  
Accessary.

8 E. 3. Itin. Pick.

fo. 3. & 5.

12 E. 4. 9. 15 E. 4.

15. b. 14 H. 6. 26.

27. 37 Aff. 8.

38 Aff. 6. 38 E. 3.

18. 13 H. 7. 12. 13.

Nota, that in the

highest and lowest

offences, viz. High

Treason and Tres-

pass, there are no

Accessaries, but in

Felony which is

between both,

there be Accessa-

ries both before

and after.

See the 3 part of

the Instit. Cap.

Principal and

Accessary.

¶ t

Chale



Chafe without an inclosure in Law, that is, by metes and bounds. Metæ sunt clausuræ Forestarum & Chacearum : and Foresta est locus in quo feræ includuntur, venandi ergo, solis metis. And where by the Statute of 6 E.1. cap.18. it is provided, quod omnes metæ Forestæ sint integræ domino regi, that is so to be understood, quoad jurisdictionem & imperium, & non quoad dominium: for if Rivers or Highways be bounds, as most commonly they be, yet the King hath no more interest in the Soil, Way, River, or Fishing, then of right he ought, but only for his jurisdiction of his Forrest, which extendeth over the whole Way, River, &c. And where Hills and other houses, trées, &c. of other men, and such like, be metes and bounds of the Forrests, yet thereby the King hath no interest in such Hills, houses or trées, &c. And therefore old Woodmen have divided metes, quoad jurisdictionem & imperium, into metes inclusive, as Ways, Rivers, &c. and into metes exclusive, as Churches, Church yards, Chappels, Mills, Houses, Trées, &c. which bound the Forrest, but are excluded from any jurisdiction: and that the said Law of 6 E. 1. is intended only of metes inclusive; if any man kill or hunt any of the Kings Deer in any part of the River, High-way, &c. being an inclusive boundary of the Forrest, he is as great an offender, as if he had killed or hunted within the main continent of the Forrest, albeit the state and interest of the soil of the High-way or River be in other men; but neither of these kinds of metes and bounds are removeable, because they are the inclosure of the Kings Forrest, and if either of them be removed, it is punishable by the Laws of the Forrest. This word meta is only used in this Statute: In ancient perambulations and records you shall read secundum metas, mæras, bundas, & \*marchias forestæ. Mera is fetched from the Saxon word mere, and that of *μερῶ* Grace, which signifieth to divide or bound. Bunda a bound is derived from the Saxon word Bunna, signifying a higher thing, as Hills, Houses, Trées, &c. Marchia is derived from the Saxon word March, now a mark. Sed meta accipitur pro quocunque termino, limite, seu fine.

\* 8 E.3. Trin' Pick.  
fo.6.  
Mera.  
Bunda.  
Marchia.  
Meta.

Virgil.

His ego nec metas rerum, nec tempora pono.

Regist. Judic. 35, 36  
Dier 16 El. 326,  
327.

And it is to be observed, that a man may have a free Chase as belonging to his Manor in his own Woods, as well as a Warren or Park in his own ground; for the Chase, Warren and Park are collateral inheritances, and not issuing out of the soil, as the Common doth, and therefore if a man hath a Chase in other mens grounds, and after purchase the grounds, the Chase remaineth.

¶ Perambulations  
of Forrests accord-  
ing to the ancient  
metes and bounds.  
Vid. sup. pag. 302.

After Easter following the Parliament holden in February, Anno 9 H. 3. according to the Statute of Carta de Foresta, Hugh de Nevil, and Brian de Lille were appointed Commissioners to take Inquisitions of the ancient metes and bounds of such Forrests, as either H. 2. or any King after had enlarged. And in the Reign of H. 3. divers Perambulations and Deafforestations were made, and many other in the reigns of H. 3. E. 1. E. 2. and E. 3. &c. All which were returned into the Chancery, and remain of Record in the Tower.

Rot. Par. Anno  
9 H. 4. nu. 40.

The Commons of Herefordshire pray remedy against the evil customs of the Forrest of Ewyastone; namely, for taking their Cattel coming thereunto as forfeit. Wherunto the Royal answer of the King in Parliament was in these words, The old good Laws and Customs of the Forrest to be observed, and the contrary forbidden by a Writ under the Privy Seal. Regalis sanè & digna Plantagenetorum genere sententia, wherewith we will conclude, that new opinions of new Authors, or single opinions of Readers grounded upon the Authorities of our Books or Judicial Presidents, are not to be allowed, but the Laws both good and old, and specially the Statute of Carta de Foresta, and other Statutes, and the resolution of the Judges thereupon are to be duly observed. See also the old and just Articles of the charge in Fleta lib. 2. cap. 35. and reject all new inventions without warrant of Law.

Nota, the Charge  
and Articles in-  
quirable by the good old Law of the Forrest, which is worthy to be advisedly read and followed. Vid. Lib. 2. fo. 80.  
Lib. 137, 138. Lib. 9. 49, 50.

Two



Two of the principal and ancient Articles, the one concerning Venison, and the other concerning Warr, be, First, that the chief Forrester at the Justice Seat ought to answer for all manner of Venison delivered by warrant, or otherwise, in this manner: The Twelve Jurors ought to present before the Justices in Eyre the number of Deer that have been killed since the last Eyre, and then the chief Forrester is to answer by what warrant the same were killed, and such warrants as are lawful ought to be allowed, and such as be unlawful are to be disallowed. Secondly, the Twelve Jurors shall present what Dikes, Trees, and other woods have been felled and delivered out of the Forrest by the Officers of the same, and they to answer and shew by what warrants the same were done; whereupon it will appear whether the warrants be sufficient or no, the truth whereof shall be enquired by the Forresters, Verderers and Regarders. But these or any other Minister of the Forrest are not to be returned of any Jury out of the Forrest.

The Laws of the Forrests of England are certain, and established by Authority of Parliament, and not, as in other Countries, changeable and sliding in uncertainty, ad principis placitum.

For the antiquity of such Forrests within England as we have treated of, the best and surest argument thereof is, that the Forrests in England (being in number 69.) except the new Forrest in Hamshire erected by William the Conqueror, as a Conqueror, and Hampton Court Forrest by H. 8. by Authority of Parliament, are so ancient as no Record or History doth make any mention of any of their erections and beginnings.

Our Ancestors the Saxons called a Forrest Buckholt, *i. sylva ferina* or *cervina*; We dare not fetch our kind of Forrest, as some do, from the holy History of Scripture, for therein we find no such Forrests as we have. And it is worthy of observation that in the Customary of Normandy Cap. 10. fo. 17. b. *Le seneschal au Prince visiteit les forests & hayes du Prince & ronoquoit les forfeits, &c.* So as we fetch not our Chief Justice of the Forrest from Normandy, where the Kings Steward was the Chief Judge of the Forrest.

And as Forrests are of great Antiquity, so the care and charge of them was in England always committed to great and honourable Personages, and the like was also in forrain Nations.

*Si canimus sylvas, sylvæ sunt Consule dignæ.*

*Virgil.*

For of ancient time the Consuls of Rome had the government of the Forrests, &c. But take Suetonius as he is, *Ab optimatibus datam scribit operam ut Provinciæ futuris Consulibus minimi negotii, i. sylvæ collecti decernerentur: for to say the truth, Recreations should not be used as Professions and Trades, but to be used as Medicines, to make men more able and fit for higher and greater affairs, and therefore they are called Recreations, because they newly create spirits, tanquam instauraciones spirituum: but yet these pleasures are accounted inter res minimi negotii. Nonnulli principes immoderato venatus studio ita correpti, & corrupti sunt, ut ei omnia posthabeant magno dedecore & ingenti aliorum damno.*

Suetonius in *Cæsare*.  
Vid. *Fleta lib. 2. cap. 35. De veteribus Capit' Forestæ. Voluptates commendat rationi* usus.

*Hæc bis bina, canes & aves, servi atque caballi,  
Dicantur dominos sæpe vorare suos.*

And to say the truth, the Hunter sitteth on a Beast, he is compassed about with Beasts, and hunteth and chaseth Beasts: and therefore not to be used daily as a Trade. And it was justly provided by the Tenth Chapter of this Charter of the Forrest, *Quod nullus de cætero amittat vitam pro venatione nostra, &c.* Hereof John Salisbury speaking of hunting and Hunters saith, *In tantum hujus vanitatis instinctu erupere, ut hostes naturæ fierent conditionis suæ immemores, divini judicii contemptores, dum in vindictam ferarum imaginem Dei exquisitis judiciis subjugarent, nec veriti sunt hominem pro bestiola perdere quem Unigenitus Dei redemit sanguine suo.*

Johannes Sarum lib. 1. de nugis Curialium c. 4. Vid. 31 H. 8. c. 22. quod cito evanuit repealed 1 E. 6. ca. 12. 1 Mar. cap. 1.



Duo clarissima  
mundi lumina  
Authoritas &  
Ratio.

Manwood fo. i.

Thus have we wandered in the wilderness of the Laws of the Forrest: Whereas in we have dissented from others, we have produced our Authorities; and shewed our Reasons, the two main lights and guides, which herein we have followed. We have faithfully published divers resolutions of the Judges concerning Forrests and Forrest Laws, wherewith we were well acquainted, which are the safest grounds to build upon. Many things which are evident by the Text of Carta de Foresta, and other Statutes concerning Forrests, we have not so much as touched, but left the same to the judicious Reader, whom we advise to beware to give credit to our new Authors, either vouching of Acts of Parliament, Book Cases, or Judgments in Cire, &c. for we have found many of them mistaken, vouched without warrant, or not understood, which the judicious Reader will soon find: nor to Carta de Foresta of King Canutus granted (as it is published in print) at a Parliament holden at Winchester, Anno Domini 1016. We confess that in that year, which was the first year of his reign, he held a Parliament at Winchester, and made divers Laws as well for the honour and worship of Almighty God, as for the good government of his people, which he published in the Saxon Tongue, (neither do we read, that he ever published any Law for England in the Danish tongue, as they affirm he did this.) In all these Laws he never maketh mention of this Carta de Foresta, or of any of these supposed Laws of the Forrest therein contained, which he had just occasion to do; for amongst his other Laws at the same Parliament, he maketh this Law in the 77 Chapter in the Saxon Tongue, which is thus translated into Latine: *præterea autem concedo ut in propriis ipsius prædiis quisque tam in agris quam in sylvis excitet agitetque, feras autem meas ne venetur cum poena præcipio.* Now in the supposed Carta de Foresta of King Canutus, in the 30 Chapter, it is thus contained: *Volo ut omnis liber homo pro libito suo habeat Venerem seu Viridem in planis suis, sine Chæsa tamen: & devitent omnes meam ubicunque eam habere voluero.* Which we hold greatly to differ from the true Law before rehearsed in two respects. First, that the true Law extended to Woods as well as to Plains, and this to Plains only. Secondly, by that they might hunt, &c. by this they cannot; therefore we leave that Carta de Foresta of King Canutus, as justly suspected, till we receive better proof of them: whatsoever it be it is of little use, for so many of the Chapters therein as be contrary to, or differing either from our Magna Carta de Foresta, or any other Act of Parliament, are certainly of no force.

Thus have we as briefly as we could, treated of the Courts of the Forrest, and incidently of such Forrest Laws as now stand in force; wherein (as the studious Reader may well perceive) we have respected matter more then method. Sæ Carta de Foresta Anno 9 H. 3. & Cart. 17. Regis Johannis. Matth. Par. pag. 264.

## CAP. LXXIV.

Of Ecclesiastical Courts, anciently called Halimots,  
(i. Holy Courts) Circgemots, or Chircgemots.

**W**Here some may doubt, how we that profess the Common Law should write of Ecclesiastical Courts, which proceed not by the rules of the Common Laws. To this we answer by good authority in our Books, that the Kings Laws of this Realm do bound the jurisdiction of Ecclesiastical Courts, and that the King is well apprised of all *a* his Judges which he hath within his Realm, as well Spiritual as Temporal, as Archbishops, Bishops, and their Officers, Deans, and other Ministers, which have *b* Spiritual jurisdiction. And that the Popes Collector or Minister (so say our ancient Books) had no jurisdiction within the Realm.

And it is declared by the King, the Lords Spiritual and Temporal, and the Commons in full Parliament, *c* That the Spirituality (now being usually called the English Church) always hath been reputed, and also found of that sort, that both for *\** knowledge, integrity and sufficiency of number it hath been always thought, and is also at this hour sufficient and meet of it self, without the intermedling of any exterior person or persons, to declare and determine of such doubts, and to administer all such offices and duties as to their rooms *d* Spiritual doth appertain: for the due administration whereof, and to keep them from corruption and sinister affection, the Kings most noble Progenitors, and the antecessors of the Nobles of this Realm have sufficiently endowed the said Church both with honour and possessions. And the Laws Temporal for trial of property of lands and goods, and for the conservation of the people of this Realm in unity and peace, without rapine or spoil, was and yet is administered, adjudged, and executed by sundry Judges and Ministers of the other part of the said body politic, called the Temporality: and both their authorities and jurisdictions do conjoyn together in the due administration of Justice, the one to help the other.

Of what things the Clergy hath Spiritual jurisdiction, is evident in our Books, and particularly in Cawdries Case, whereof there is no question. And certain it is, that this Kingdom hath been best governed, and peace and quiet preserved, when both parties, that is, when the Justices of the Temporal Courts, and the Ecclesiastical Judges have kept themselves within their proper jurisdiction, without incroaching or usurping one upon another; and where such incroachments or usurpations have been made, they have been the seeds of great trouble and inconvenience; for preventing and avoiding whereof, we have composed this Treatise of the Ecclesiastical Courts of the Realm.

The Adversary hath made divers objections against our Archbishops and Bishops made about the beginning of the reign of Queen Elizabeth, and by consequent against the Bishops ever since. *e* First, That they were never consecrated according to the Law, because they had not three Bishops at the least at their Consecration, nay never a Bishop at all, as was pretended; because they being Bishops in the reign of E. 6. were deprived in the Reign of Queen Mary, and were not, (as was pretended) restored before their presence at the Consecration. These pretences being (in troth) but meer cavils, tending to the scandal of the Clergy (being one of the greatest States of the Realm, as it is said in the Statute of 8 Eliz. c. 1.) are fully answered by the said Statute, and provision made by authority of that Parliament for the establishing of the Archbishops

2 H. 4. 9.  
Rot. claus. 4 H. 4.  
m. 11. optime.  
Rot. claus. 11 E. 2.  
Dorf.  
*a* Nota, the Kings  
Judges.  
*b* Spiritual jurisdiction.

*c* 25 H. 8. cap. 21.

*\** If so, then much  
more at this day.  
See before pag. 43.

*d* The Spiritual  
jurisdiction.

The Temporal  
jurisdiction.

Of what things  
they have jurisdiction.  
*Articuli Cleri per  
totum, lib. 5. fol. 1.  
Cawdries case.*

See before cap. of  
the Chancery, the  
Articles against  
Cardinal Wolsey.  
Art. 1. 13. 14. 17.  
18. 19. 22. 24. 25.  
29. 30.  
Bract. lib. 5. c. 2. & c.  
Britton fol. 10. b.  
Rot. Parl. 15 E. 3.  
nu. 22.  
*e* See Dier. Mich.  
6 & 7 Eliz.  
8 Eliz. cap. 1.

and



Parker in libro de  
antiquitate Bri-  
tannicæ Ecclesiæ.  
sub titulo *Mat-  
theus*. Imprinted  
1572. 13 Eliz.

35 Eliz. cap. 8.

and Bishops both in præfenti and in futuro, in their Bishopricks. Of this Sta-  
tute Archbishop Parker in his Book De antiquitate Britannicæ Ecclesiæ speak-  
ing of himself saith, Anno domini 1559. Cantuar' Episcopus electus est a Decano  
& capitulo Ecclesiæ Metropoliticæ Cantuar': posteaque eodem Anno 17 Decembris  
adhibitis quatuor Episcopis, &c. lege quadam de hac re lata, requisitus consecra-  
tus est. Another objection was made against our Archbishops and Bishops, for  
that the Commission (being never enrolled) whereby the Bishops made in  
Queen Maries time were deprived befoze the fourth year of the reign of Queen  
Elizabeth, or the Record of the approbation of them cannot be found: & therefore  
it was pretended that the Archbishops and Bishops made by Queen Elizabeth,  
liking the former, should be no lawful Bishops. But by the Statute of 39 Eliz.  
cap. 8. the Archbishops and Bishops are adjudged lawful, as by the said Act ap-  
peareth. And by these two Statutes, these and all other objections against our  
Bishops are answered, which we have thought good to remember, seeing we are  
to treat of their jurisdiction, ut obstruatur os iniqua loquentium.

### ¶ Of the Court of Convocation.

The Name.  
F. N. B. 269. 8.  
Register fo.  
See the first part  
of the Institutes  
Sect. 133.  
23 H. 8. cap. 1.  
32 H. 8. cap. 23:  
& 33 H. 8. ca. 31.  
Anciently called  
Churchgemore.  
Int. leges Hen. 1.  
cap. 8. Quosque  
Churchgemot discordantes inveniet, vel amore congreget, vel sequestret iudicio. \* 21 E. 45, 46.

It is called the Convocation of the Clergy. In England there being two  
Provinces, the one of Canterbury and the other of York, the Bishops and  
Suffragans belonging to York, are the Bishops of Duresme, Carlisle, Chester  
and the Isle of Man, and all the rest of the Bishops are within the Province of  
Canterbury.

In domo Convocationis the whole Clergy of either Province are either pre-  
sent in person, or by representation: \* but these Provinces  
and they only sit in the Parliament time, and this consisteth of two parts, viz.  
the Upper house, where the Archbishops and Bishops sit, and the Lower house  
where the rest do sit.

Beda.  
¶ The Antiquity.  
Newburgh lib. 2.  
c. 13. Bract. lib. 3. fo. 123, 124. 6 H. 3. Hol. 203. Rot. Parl. 18 E. 3. nu. 1. Rot. Parl. 2 H. 4. nu. 29. F. N. B. 269. 8 H. 6. c. 1.

Anno Domini 686 Augustine assembled in Council the Brittain Bishops, and  
held a great Synod.

¶ By what Autho-  
rity assembled.  
13 E. 3. Rot. Parl.  
16. 24. Dorl. clau.  
17 E. 2. m. 30, 31.  
25 H. 8. cap. 19.  
¶ What their juris-  
diction was.

The Clergy was never assembled or called together at a Convocation but by  
the Kings \* Writ, adjutoria Regis, as Beda saith, ubi supra, Vid. Parl. 18 E. 3.  
nu. 1. Int. leges Inæ Anno Domini 727. a Convocation of the Clergy called Mag-  
na servorum Dei frequentia.

Their jurisdiction was to deal with Heresies, Schismes, and other mæe  
Spiritual and Ecclesiastical causes, and therein they did proceed juxta legem di-  
vinam, & Canones sanctæ Ecclesiæ. a And as they could never assemble together  
of themselves, but were always called together \* by the Kings Writ, so were  
they oftentimes commanded by the Kings Writ to deal with nothing that con-  
cerned the Kings Laws of the Land, his Crown and dignity, his Person, or his  
State, or the State of his Council or Kingdom: as to illustrate this matter to  
remember one or two examples.

Merton cap. 9.  
21 E. 4. 45. 1. per  
Vavasor. & b. per  
Starkey, Brown,  
& Vavasor. 20 H. 6.  
13. 34 H. 6. 39.  
28 H. 6. 11. Regist. fol. F. N. B. 269. a De procurat. Cler. See in the Chapter of the High Court of Parliament,  
Regist. 261. F. N. B. 229. a. & Parl. 6. E. 3. nu. 6. 8 H. 6. cap. 1. \* 2 Chron. 29. 15. Ezechias. Numb. cap. 10.  
ver. 1, 2. vid. sup. pa. 43.

Rot. Pat. 18 H. 3.  
2. part m. 17.  
De prohibitione  
facti. Episcopis.

Mandatum est omnibus Episcopis qui conventuri sunt apud Gloucestriam die  
Sabbathi in crastino Sanctæ Katharinæ firmiter inhibendo quod sicut Baronias suas  
(quas de Rege tenent) diligunt, nullo modo præsumant consilium tenere de ali-  
quibus quæ ad coronam Regis pertinent, vel quæ personam Regis vel statum suum,  
vel statum concilii sui contingunt. Scituri pro certo quod si fecerint, Rex inde se  
capiet ad Baronias suas. Teste Rege, &c.

See



See the Statute of Carlisle Anno 35 E. 1.

Rex, &c. Venerabilibus in Christo patribus eadem gratia W. Archiepiscopo Cantuariensi, totius Angliæ Primati, ac cæteris Episcopis & Prælati Cant' Provinciæ ad Concilium provinciale apud London' in proximo conventuris. Mandamus vobis in fide & dilectione quibus nobis tenemini firmiter inhibentes ne in dicto Concilio quicquid in nostri, aut status Coronæ nostræ vel Regni nostri præjudicium statuatis, faciatis, seu quoquo modo libet ordinetis. Teste Regē, &c.

De isto negotio scribitur præfatis Prælati per literas de credentia, ut in Rotulo clausarum sub eodem Datu continetur.

Prohibitio fact' Archiepiscopo Cant' & Clero conventur post festum Sancti Barth. quod nihil attemptent in præjudicium Coronæ.

Vide Cap. Of the High Court of Parliament, pag. 4. & 5. a. for Procuratores Cleri, & 21 R. 2. cap. 2.

And further the King did often appoint Commissioners by Writ to sit with them at the Convocation, and to have consuls of such things as they meant to establish, that nothing should be done in prejudice, ut supra. And therefore the Statute of 25 H. 8. c. 19. (whereby it is provided, that no Canons, Constitution, or Ordinance should be made or put in execution within this Realm by authority of the Convocation of the Clergy, which were contrariant or repugnant to the Kings Prerogative Royal, or the Customs, Laws, and Statutes of this Realm) is but declaratory of the old Common Law.

Mar. cap. 8. the Prerogatives, and Laws of the Crown saved. *Versus finem.*

But by the said Act of 25 H. 8. their jurisdiction and power is much limited and straitened concerning their making of new Canons: for they must have both license to make them, and after they be made, the Kings Royal assent to allow them, before they be put in execution. But in the end of that Act there is an express Proviso, that such Canons as were made before that Act, which be not contrariant nor repugnant to the Kings Prerogative, the Laws, Statutes or Customs of the Realm, should be still used and executed as they were before the making of that Act. But before that Act a Dilme granted by the Clergy at the Convocation, did not bind the Clergy before the Kings Royal assent.

King H. 8. was acknowledged Supream Head in divers Convocations.

And if any cause shall depend in contention in any Ecclesiastical Court which may or shall touch the King his Heirs, or Successors, the party grieved shall or may appeal to the Upper house of Convocation within 15 days after sentence given.

As there be two houses of Convocation, so are there two Prolocutors, one of the Bishops of the Higher house, chosen by that house, another of the Lower house, and presented to the Bishops for their Prolocutor.

It is called Convocation à Convocando, because they are called together by the Kings Writ.

The Clerks of the Convocation called by the Kings Writ, and their servants and familiars shall have such privilege in coming, tarrying, and going, as the great men, and Comminalty of this Realm, called to the Kings Parliament.

### Of Subscription.

Subscription required by the Clergy is twofold: one by force both of an Act of Parliament confirming and establishing the 39 Articles of Religion agreed upon at a Convocation of the Church of England, and ratified by Queen Elizabeth under the Great Seal of England. Another by Canons made at a Convocation of the Church of England, and ratified by King James, as is aforesaid.

By the Act of 13 Eliz. cap. 12. referring to Canons made by the Clergy of England at a Convocation holden at London in Anno Domini 1562. containing 39 Articles of Religion, ratified as is aforesaid.

Stat. de Carlisle  
35 E. 1.  
Rot. Par. 15 E. 2.  
1 part. m. 8. p. 102  
Régé de inhibiti-  
one facienda.

6 E. 3. dorf. claus  
part. 2. m. 151 & 60

51 E. 3. nu. 42.  
46 E. 3. prem. 8.  
27 E. 4. 45. ubi sup.  
Rot. Parl. 1 R. 2.  
nu. 1. 4.  
\* 25 H. 8. cap. 19.  
19 E. 3. Quare non  
admisit acc'.  
10 H. 7. 6. per  
Brian. & 2 Ph. 8.  
faved. *Versus finem.*

¶ what their jurisdic-  
tion now is.

2 R. 3. 4. 21 E. 4.  
42. 47. 20 H. 6. 13.

26 H. 8. cap. 1.  
24 H. 8. cap. 12.  
1 Eliz. cap. 1.

8 H. 6. cap. 1.

13 Eliz. cap. 12.  
At a Convocation  
holden at London  
An. Dom. 1562. &  
40 Eliz.

The



At a Convocation  
begun at London,  
An. Domini 1603.  
1 Jac. Regis §. 36.

This Book is rati-  
fied and confir-  
med by Act of  
Parliament, viz.  
2 E. 6. c. 1. 5 E. 6.  
c. 1. 1 El. c. 2. 8 El.  
c. 1. 23 El. cap. 1.

Dier 23 El. 377.  
Lib. 6. fol. 69.  
Grenes case.  
\* Smiths case.

The other is by Canons of the Church of England made and ratified by King James, as is aforesaid.

The subscription hereby required is to three Articles.

The first is, That the Kings Majesty under God is the only supreme Go-  
vernoz of the Realm, and of all other his Highness Dominions and Coun-  
tries, &c.

2. That the Book of Common Prayer, and of ordering of Bishops, Priests,  
and Deacons, containeth nothing in it contrary to the Word of God, &c.

3. That he alloweth of the said 39 Articles of Religion, and acknowledgeth  
them to be agreeable to the Word of God.

And in this Section, Ubi supra, 1 Jac. The form of the subscription is set  
down, which was not expressed in the Act of 13 Eliz.

By the Statute of 13 El. the Delinquent is disabled and deprived ipso facto,  
but the Delinquent against the Canon of King James is to be proceeded withal  
by the censures of the Church. This Statute of 13 is well expounded in Dier  
23 El. 377. & lib. 6. fol. 69. in Grenes case.

And I heard Wray Chief Justice in the Kings Bench, \* Pasch. 23 El. report,  
that where one Smith subscribed to the said 39 Articles of Religion, with this  
addition (so far forth as the same were agreeable to the Word of God) that it  
was resolved by him, and all the Judges of England, that this subscription was  
not according to the Statute of 13 Eliz. because the Statute required an abso-  
lute subscription, and this subscription made it conditional; and that this Act  
was made for avoiding of diversity of opinions, &c. And by this addition the  
party might by his own private opinion take some of them to be against the  
Word of God; and by this means diversity of opinions should not be avoided,  
which was the scope of the Statute, and the very Act it self made touching Sub-  
scription hereby of none effect.

He must also bring a testimonial from men known to the Bishop, to be of  
sound Religion, a testimonial both of his honest life, and profession of the Do-  
ctrine expressed in the said Articles; and he ought to be able to answer, and ren-  
der to the Ordinary an account of his Faith in Latin, &c.

Besides this subscription, when any Clerk is admitted and instituted to any  
Benefice, he is sworn to Canonical obedience to his Diocesan.

### ¶ Of the High Commission in causes Ecclesiastical.

Pasch. 9 Jac. the  
resolution of the  
Court of Common  
Pleas upon ma-  
ture deliberation,  
set down in wri-  
ting by the com-  
mandment of  
King James.

Two questions have been made concerning the Jurisdiction of these Com-  
missioners.

First, What causes do belong to the High Commissioners by force of the Act  
of 1 El. cap. 1. and of the Letters Patents thereupon grounded.

Secondly, In what cases the High Commissioners by the said Act of 1 Eliz.  
cap. 1. and of the Letters Patents to them granted, may impose fine and impris-  
onment, and in what not.

It is said, by force of the Statute of 1 El. for that before this Act it is agreed,  
that all Ordinaries and Ecclesiastical Judges whatsoever, ought in all Ecclesi-  
astical causes to have proceeded according to the censures of the Church, and  
could not in any case have punished any Delinquent by fine or imprisonment,  
unless they had authority so to do by Act of Parliament. And the Papal au-  
thority (as hath been confessed) did never fine or imprison in any case, but ever  
proceeded only by Ecclesiastical censures. Seeing then the state of the question  
concerning fine and imprisonment dependeth wholly upon the Statute of 1 Eliz.  
and is of greatest consequence, and openeth the way to the other question, for it  
is confessed that by Letters Patents only (without an Act of Parliament) such  
power to fine and imprison in Ecclesiastical causes cannot be granted, the point  
of fine and imprisonment shall be first handled. And for that every Act of Par-  
liament doth consist of the letter, and of the meaning of the makers of the Act:  
the



the Act of 1 Eliz. doth neither by meaning nor letter give any power to the High Commissioners to fine or imprison any, but in certain particular causes, as shall manifestly out of the Act it self appear hereafter. And seeing every Act of Parliament upon consideration had of all the parts thereof together, is the best Expōsitor of it self, the parts of this Act of 1 Eliz. do necessarily fall into consideration.

First, the Title of the Act is, *An Act restoring to the Crown the ancient Jurisdiction, &c.* By this the nature of the Act doth appear to be an Act of Restitution. The title of the Act.

And this is also manifest by the preamble of the Act; where it is said:

Whereas divers good Laws were made in the time of the late King Henry the Eighth, for the extinguishment of all forrain power, and for the restoring unto the Crown of this Realm the ancient rights and Jurisdictions of the same. The preamble of the Act.

From whence this reason is drawn, that seeing the express letter and meaning is to restore to the Crown the ancient Jurisdiction Ecclesiastical, and no Commissioner by force of that ancient Ecclesiastical Jurisdiction could impose fine and imprisonment, that these Commissioners having their force from this Act of Restitution, cannot punish any part by fine or imprisonment, otherwise then shall be hereafter expressed. 1 Ratio.

The first clause of the body of the Act (to let in the restitution of the ancient Right and Jurisdiction Ecclesiastical within the Realm) doth abolish all forrain Jurisdiction out of the Realm.

Then followeth the principal clause of restitution and uniting of the ancient Jurisdiction Ecclesiastical, being the main purpose of the Act, in these words.

Be it enacted, that such Jurisdiction, &c. Spiritual or Ecclesiastical, as by any Spiritual or Ecclesiastical power or authority hath heretofore been, or lawfully may be exercised or used for the visitation of the Ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities, shall for ever by Authority of this Parliament be united and annexed to the Imperial Crown of this Realm.

And upon this clause being the final intention of this Act expressed in the Title and Preamble, do the subsequent clauses depend; Therefore this clause is especially to be considered, and therein these things are to be observed.

First, that by this clause Queen Elizabeth was not declared Supream head, &c. but by a former clause in this Act, viz. that the Statute of 1 & 2 Ph. & Mar. cap. 8. (whereby amongst others, the Act of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were repealed) was by this Act made utterly void, and consequently the Act of Repeal being repealed, the Acts of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were amongst others implicate revived, by which Acts of 26 H. 8. and 35 H. 8. It is declared and enacted, that the King, his heirs and successors, should be taken and accepted the only supream Head in Earth of the Church of England, and should have and enjoy annexed to the Imperial Crown of this Realm, as well the title and stile thereof, as all honours, dignities, preheminences, jurisdictions, &c. to the said dignity of supream Head belonging, &c. By which stile, title, and dignity of supream Head of the Church of England, King H. 8. his heirs and successors had and have all Ecclesiastical Jurisdiction whatsoever. So as the first clause reviving the Act of 26 H. 8. &c. thereby Queen Elizabeth, her heirs and successors were supream Head of the Church of England. And there this Act extending to raise a Commission for the necessity of the time, intended only to restore and annex to the Crown such Jurisdiction in some particular points as by the intent of the Statute, the Commissioners should execute, and not to de-



clare by this clause that her Majesty should be supreme Head of the Church, for that was provided for before.

2 Ratio.

Secondly, that no jurisdiction is by this Act restored and united to the Crown, but such as before the Act had been, or lawfully might be exercised or used for the reformation, &c. correction, &c. Whereupon it is concluded, that seeing that no man could be fined or imprisoned by force of any Jurisdiction Ecclesiastical, which had been used, or lawfully might be used before this Act, that therefore by this Act no power of fining and imprisoning in Ecclesiastical causes is given by this Act.

The third observation is, that this clause divideth it self into two branches: the first concerning the visitation of the Ecclesiastical state and persons. This branch was enacted out of necessity, for that all the Bishops, and most of the Clergy of England, being then Popish, it was necessary to raise a Commission to deprive them, that would not deprive themselves, and in case of restitution of Religion to have a more summary proceeding then by the ordinary and proper course of Law is required. This branch only concerns Ecclesiastical persons: So as, as necessity did cause this Commission, so it should be exercised but upon necessity, for it was never intended that it should be a continual standing Commission, for that should prejudice all the Bishops of England in their Ecclesiastical Jurisdiction, and be grievous to the subject to be drawn up from all the remote parts of the Realm, where before their own Diocesan they might receive Justice at their own doors.

The first Commission upon these Statutes, whereby about 20 Bishops were deprived, and many others of the Popish Clergy, is said to be lost, and inrolled it is not, as it ought to have been. And it is affirmed by some that have seen it, that it passed not above twenty sheets of paper copy wise; but now the High Commission contains above three hundred sheets of paper. And it is likewise affirmed, that never any High Commission was inrolled (as they all ought to have been) until my Lord Chancellor Egertons time, so as no man before that time could know what their Jurisdiction was till that time.

The second branch is, And for reformation, order, and correction of the same (*that is, of Ecclesiastical persons*) and of all manner of Errors, Heresies, Schismes, Abuses, Offences, Contempts and Enormities.

So as these two branches extend not to the universality of the Supremacy, but only to those points whereunto the Commission to be raised by this Act should extend, for which purpose nothing is restored or united by this Act, but only the visitation of the Ecclesiastical state and persons, and the reformation of the same and of all Errors, Heresies, Schismes, Abuses, Offences, Contempts, and Enormities which be criminal.

The Jurisdiction being restored to Queen Eliz. her heirs and successors, next and immediately both the Act, &c. give her power to assign and authorize Commissioners to execute this Jurisdiction restored and united to her, for which purpose it is further enacted, That your Highness, your heirs and successors shall have power and authority by virtue of this Act by Letters Patents, &c. to assign, name, and authorize, &c. such persons being natural born subjects, &c. as your Majesty, your heirs and successors shall think meet to exercise, use, occupy, and execute under your Highness, your heirs and successors, all manner of Jurisdiction, &c. in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdiction, &c. and to visit, reform, &c. all errors, heresies, schismes, abuses, offences, contempts and enormities, which by any manner Spiritual or Ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed, corrected, restrained or amended.

Out of this clause of Assignment it is to be observed, that the substance of the Commission of assignment or deputation is described and portrayed out both for manner and matter by this clause.

1. That

The clause of Assignment of the Jurisdiction restored by this Act.



1. That it ought to be under the Great Seal.
2. The Commissioners to be assigned ought to be natural born subjects of Queen Eliz. her heirs or successors.
3. Their Authority, viz. To exercise, use, occupy and execute under your Highness, your heirs and successors, all manner of jurisdiction, &c. and to visit and reform all such Errors, Heresies, Schismes, abuses, offences, &c. which by any manner of Ecclesiastical or Spiritual power can, or lawfully may be reformed, corrected, &c.
4. The local limits and bounds of their Commission, viz. within the Realm of England, &c.

So as by this clause there is no question, but the Commissioners for such causes as are committed to them by force of this Act, may, if the Commissioners be competent, proceed to deprivation of the Popish Clergy, which was the main object of the Act, or to punish them by Ecclesiastical censures, and by no words, or meaning hitherto can punish by fine or imprisonment, for that no Ecclesiastical power could reform and correct (as the Statute speaketh) in that manner. And without question, if the Commissioners be competent, that is, if they be spiritual men, they may proceed to sentence of Excommunication, which may right well be certified as well as Excommunication before Commissioners Delegates; both of these Authorities being under the Great Seal, and each of them having authority by force of several Acts of Parliament. And Excommunication certified by Commissioners Delegates hath been allowed, as it appeareth in 23 Eliz. Dier 371. And in many cases Acts of Parliament have adjudged men excommunicate ipso facto. But if they be mere Lay men, the fault is not in the Statute or in the Law, but in the nomination: and upon Certificate made of the Excommunication according to Law, a Significavit or Cap. Excom. shall be awarded out of the Chancery, for the taking and imprisoning of the bodies of such Excommunicate persons.

3 Ratio:

The High Commissioners may excommunicate if they be competent.  
Dier 23 El. 371.

Now after the Letters Patents of the Commission are described, and limited, followeth a clause of direction for the Commissioners to keep themselves within their Commission in these words.

And that such persons so to be named, &c. after the said Letters Patents to them delivered shall have power and authority by virtue of this Act, and the said Letters Patents under your Highness, your heirs and successors to exercise, use and execute all the premisses according to the tenor and effect of the said Letters Patents, any matter or cause to the contrary in any wise notwithstanding.

The clause of Execution.

This is a clause of reference merely to the former parts of the Act, and yet by colour of this clause the High Commissioners do pretend to fine and imprison.

That this clause referreth wholly to the former parts of the Act, it is apparent by the very words thereof, for first, the words be to exercise, use, and execute all the premisses, which word (premisses) referreth to all the former branches of the Act, viz. 1. To the ancient jurisdiction Ecclesiastical, restored by this Act, by which ancient jurisdiction no person could be corrected by fine or imprisonment. 2. To such jurisdiction Spiritual or Ecclesiastical, as by any Spiritual or Ecclesiastical power hath heretofore been, or lawfully might be exercised, or used; for these be the express words of the main clause of restoring and uniting of the ancient jurisdiction to the Crown. But it is agreed, that before this Act no man could be punished by fine or imprisonment by any Ecclesiastical power, unless it were by force of some Act of Parliament; therefore by these words in this clause (to execute the premisses) the Commissioners cannot fine or imprison. This word (premisses) hath relation to these words in the clause of assignation next going before this clause, viz. to visit, reform, redress, order, correct, and amend all such errors, heresies, schismes, &c. which by any manner, power, authority, or jurisdiction Ecclesiastical or Spiritual can, or may lawfully be reformed, &c. corrected, &c. but no correction before this Act could be by fine or imprisonment, but in certain special cases.



\* Premises.  
\* Said.

Then this clause followeth, (according to the tenor and effect of the said Letters Patents) which words also do wholly refer to the former parts of the Act. For if these words (to execute all the \* premises) be words of reference, then the addition of these (according to the tenor and effect of the \* said Letters Patents, any matter or cause to the contrary in any wise notwithstanding) must of necessity be referred also to the former parts of the Act, by none of which power is given to fine or imprisonment.

Also this word (execute) cannot but be referred to the former authority. And it is not said according to the tenor and effect of any Letters Patents, and yet if the words had been so, the same being coupled to the word (premises) had not restrained them, for they could in that case but only have executed the premises, but the words be according to the tenor and effect of the Letters Patents before limited by the said Act, that is, first that the Letters Patents be under the Great Seal. 2. That they be made to natural born subjects. 3. Their authority is declared with a limitation. 4. The local limits and bounds of the Commission is set down: and this is the true and genuine sense of these words, viz. To execute the premises according to the tenor and effect of the said Letters Patents. And therefore we marvel how in a case of so great consequence, and so visible to every eye that looks into the Act of 1 Eliz. the very words thereof are (for the advantage of the High Commissioners) in the very binding clause altered, and changed. For there it is alledged, that the Statute of 1 Eliz. saith, that the High Commissioners shall execute the premises by virtue of this Act according to their Commission indefinitely without reference or restraint, whereas the words of the Act be, according to the said Letters Patents, the effect whereof was limited and expressed before. And by the authority that is claimed by the Commissioners, who saith not, but that confiscation of Lands, forfeiture of goods and chattels, &c. as well may be imposed, as fine and imprisonment? But were it not a violent interpretation directly against the letter and meaning of the Act, and full of great inconvenience to make of these latter words this construction, viz. that the High Commissioners should correct and punish all the Errors, Heresies, Schismes, Offences, Abuses, Contempts, and Enormities, &c. under such pains, forfeiture and penalty, as Queen Elizabeth, her heirs and successors, by any Letters Patents, should impose or appoint: and that consequently by force of the generality of this construction, she did impose and appoint fine and imprisonment. Which construction should be first directly against the words and meaning of the Act for the causes aforesaid. Secondly, that by the same reason by the generality of such a construction Queen Elizabeth might have imposed forfeiture of lands, confiscation of goods, nay corporal punishment, loss of member, and of life also, for incontinency, solicitation of chastity, working on a Holiday, or any inferiour offence punishable by the Ecclesiastical Law, and yet the sentence of the Commissioners in such cases should be both fatal and final, and uncontrollable by any ordinary means, either by Appeal, Error, Moderata misericordia, or otherwise. Thirdly, that this violent construction, under mystical and cloudy words, should extend to fine and imprisonment, &c. all persons, as well Lay men of what estate, degree, or sex soever, in cases Ecclesiastical (where they were not to be fined and imprisoned before) as to Ecclesiastical persons, who were the proper objects of this Act. And then by the Construction that hath been made of the other side in cases where an executor detaineth a Legacy, or a Parishioner payeth not his tithes, or the like concerning Meum and Tuum, the Queen, &c. might have inflicted (as hath been said) what punishment she would, and the High Commissioners fine and imprisonment (as it standeth at this day) without limitation of time, be it never so great, or time of imprisonment, be it never so long, and without controlment by any ordinary remedy, be the sentence never so unjust or erroneous; then which nothing could be more absurd and inconvenient. Talis interpretatio in ambiguis semper fienda est, ut evitetur inconveniens & absurdum. But this construction should not be in ambiguis, but directly against the words and meaning of this Act. And seeing it hath been granted that the Papal authority

Nota:



rity or any other having Ecclesiastical jurisdiction could not fine and imprison before this Act of 1 El. and that it is expressly said in the preamble of this Act, that where in the reign of King H. 8. divers good Laws were made as well for the extinguishment of forein authority, as for restoring to the Crown the ancient jurisdictions, &c. by reason whereof the subjects were kept in order, and disburdened of great and intolerable charges and exactions (which good Laws being repealed by Queen Mary the said Act doth revive and restore) It followeth a concessis, and by the Letter of this Act, that it was never the meaning of the makers thereof to extend the said clause to fine and imprison the subject for Ecclesiastical causes, and to make him subject to greater confiscations, forfeitures, and punishments, where his body before this Act was not subject to imprisonment but upon the Kings Writ De excom. capiendo, nor his body, lands and goods, to fines, or other penalties, or punishments, by them to be imposed, &c. for this were not by this Act of restitution to ease them of former intolerable charges (as the Statute speaketh) but by this Act to make them subject to greater and more heavy pains, punishments and charges, then ever they were before. And the Statute of 27 H.8. c.15. saith, that the Canons, &c. were overmuch onerous to his Highness subjects, but they were never so onerous as this Act should be. But Uno absurdo dato infinita sequuntur. We must therefore retire our selves to the text of the Act of 1 El. the only ground of this question, and thereupon the conclusion is, that no Letters Patents can by vertue of this Act of 1 Eliz. give any power to the Commissioners to imprison, except it be in certain particular cases, which now fall into consideration. For example, The Statute of 1 H.7. cap.4. doth give power to Bishops, &c. to commit Priests convicted of any incontinency to prison, and that no Bishop, &c. shall be chargeable therefore in an Action of false imprisonment. Now seeing that such jurisdiction Ecclesiastical) that is, to hear, determine, and punish, &c.) as by any Spiritual or Ecclesiastical power or authority before the said Act of 1 Eliz. had been, or might lawfully have been exercised or used for the visitation of the Ecclesiastical state and persons, and for reformation and correction of the same, and of all manner of Errors, Heresies, Schismes, &c. and that every Bishop, &c. might punish such offenders by imprisonment according to the said Act, that such power (and the like in any other case by Act of Parliament if any be) is united to the Crown and may be committed over to the High Commissioners as before the said Act by any Spiritual or Ecclesiastical power had been or lawfully might be used, which be the words of the Act it self.

1 H.7. cap.4.

Vid. Stat. of 2 H.4; cap. 13. & 1 Eliz. cap.1. and observe them well.

But these general words, viz. Which have been or lawfully might be used, &c. do not extend to any authority or power given by any Act of Parliament to any Ecclesiastical Judge: which Act stood repealed and adnulled by a former Act of Parliament, and had no essence at the time of the making of this Act of 1 Eliz. and that for two reasons: First, For that this Act of 1 Eliz. doth repeal and revive divers Acts of Parliament, and therefore shall not be construed to repeal or revive any other by the said general words. Secondly: For that general words shall not extend to authorities repealed or adnulled by Act of Parliament. And so it was adjudged in the Lord Darcies case in the Kings Bench Pasch 38 Eliz. where the case was, that the Lord of the Mannor of Thorp Kirby was amongst other franchises and immunities discharged by the Letters Patents of King E.4. of Purveyance: which Charter for the point of discharge of purveyance was adnulled by the Statute of 27 H.8. cap. And after the Mannor comming to the hands of King E.6. he by his Letters Patents granted the said Mannor to the Lord Darcie and his heirs; and further granted Tot, talia, eadem, hujusmodi & consimilia jura, jurisdictiones, franchiseas, privilegia, &c. quot, quanta, qualia, & quæ, &c. prout aliquis Dominus manerii habuit, tenuit, seu gavius fuit virtute alicujus cartæ, doni, seu concessionis aut aliquarum literarum patentium per præfatum regem, aut per aliquem progenitorum suorum quoruncunque fact' concess' seu confirmat, aliquo statuto non obstante. And it was adjudged as it had been before in the Lord Pagets case, Michael' 21 & 22 Eliz. in Scaccario: that albeit such

Pasch. 38 Eliz. coram Rege the Lord Darcies case.

Mich. 21 & 22 Eliz. in Scaccario, the Lord Pagets case.



such a general grant had been enacted and confirmed by Act of Parliament, yet had not those general words extended to revive any authority, franchise, privilege, &c. once granted, and which was after, and before the grant repealed or resumed by Act of Parliament, unless there had been special words to revive the same, but should extend to other authorities, franchises and privileges which stood not then repealed.

1 H. 7. 12, 13.

And there is a far stronger case reported in 1 H. 7. f. 12, & 13. By authority of Parliament all preeminences, prerogatives, franchises, and liberties were given to King H. 7. in tail generally without limitation or saving. And the question was, whether the franchises and liberties of Lords and other inferior subjects were given: and it was resolved by all the Judges that they were not, for that the Act was to be intended to do no inferior subject wrong, but the general words were to be intended of such as might be intailed without prejudice of the subject; which is a stronger case then this, for besides the prejudice of the inferior Ordinary for his jurisdiction, and for the subject for taking away his appeal, and drawing him from remote parts to his intolerable charge, where he might receive justice at home, the clause preceding of uniting, and latter particular words do limit and expound the generality of the former words.

Now that divers and many other Acts of Parliament, which are general in words, have upon consideration of the mischief, and all the parts of the Act (for the avoiding of the inconvenience and absurdity that might follow) received a particular interpretation, it appeareth in our Books in cases of far less inconvenience and absurdity.

Pl. Com. fol. 369.  
Stowels case.

Pl. Com. in Stowels case f. 369. the Preamble is to be considered, for it is the key to open the meaning of the makers of the Act, and mischiefs which they intend to remedy. The Judges of the Law have ever in such sort perused the intents of the meaning of the makers of Acts of Parliament, as they have expounded Acts general in words to be particular, where the intent hath been particular (which are the words of the Book:) And therefore upon that rule it is there adjudged, that where the Statute of 7 E. 6. is general; if any Receiver or minister accountant, &c. receive of any person any sum of money for payment of any taxes, &c. shall forfeit 6 s. 8 d. for every penny; that this do not extend according to the generality of the words to the Receiver of common persons, because these words subsequent be added (otherwise then he lawfully may by former laws and statutes.) Now the Judges restrained the generality to a particular, to the Kings Receiver only: for that no law or statute was formerly made concerning common persons Receivers, &c. But in the case in question, as well the precedent clause of restitution, as the subsequent clause expressing offences in particular, and the words in the same general sentence, viz. under your Highness, &c. and principally the cause of the making of this Act do qualify the generality of the words. And yet notwithstanding it was resolved by all the Court in the said case of Stradling, f. 203. a. that the Receiver of common persons were within the words of the said Statute. But there it is said, that if a man consider in what point the mischief was before the Statute, and what thing the Parliament meant to redress by this, he shall perceive that the intent of the makers of the Act was to punish only the Ministers of the King. And a little after the Judges say that the stile of that Act is. An Act for the true answer of the Kings Revenues. And by this also the intent of the makers of the Act is to be collected, and these be the words of the book, which is a far stronger case then the case in question.

4 E. 4. 4. & 12.

4 E. 4. f. 4 & 12. Every Statute ought to be expounded according to the intent of them that made it, where the words thereof are doubtful and uncertain, and according to the rehearsal of the Statute; and there a general Statute is construed particularly upon consideration had of the cause of making of the Act, and of the rehearsal of all the parts of the Act. To conclude this point with a general rule allowed by all Laws in construction of Statutes. *Quamvis lex generaliter loquitur, restringenda tamen est, ut cessante ratione & ipsa cesset; cum enim ratio sit anima vigorq; ipsius legis, non videtur legislator id sensisse, quod ratione careat, etiamli*



etiamſi verborum generalitas prima facie aliter ſuadeat. Seeing then ſo many inconveniencies againſt reaſon, and the meaning of the makers of the Act ſhould follow, it is evident that the generality of the ſaid words in the claufe of Annihilation ſhall (as they ought) be limited by the claufe of Reſtitution, as hath been ſaid. And it agreeth not well with the ſtile of the High Commiſſion to deal in petty and inferior cauſes. And for the recital of a Branch of this Act in the Statute of 8 El.c.1. It referreth to the Act of Primo it ſelf, and is only in the Prefamble, and therefore doth neither increaſe nor diminith the ſame. But albeit they have conſulance and juriſdiction of enormous and heinous cauſes, according to the original inſtitution, yet cannot they puniſh the offender in the ſame by fine or impriſonment, unleſs the ſame were puniſhable by fine or impriſonment before the making of the ſaid Act of 1 Eliz. by ſome Act of Parliament unrepealed at the making of this Act.

But it is ſaid (enormous) is uncertain; ſurely in an Act whereof many of the makers are Lay and unlearned men, it hath been expounded by Law to be equiſpollent to heinous, horrible and exorbitant. And this appeareth by the Statute of 2 E.3.c.2. Commiſſion of Dier and Terminer, &c. ſhall not go out, but where the treſpaſs is horrible. Now if ſuch Commiſſion be granted for a ſmall cauſe, a revocation thereof, which is a flat prohibition, doth lye, as it appeareth in the Reſgiſter 125, and the words thereof be, Quia non enormis laſio. Which word (enormis) in that Writ doth expreſs this word [horrible] in the ſaid Act, and there is as great uncertainty in that caſe upon this word [enormis] to prohibit the Commiſſioners of Dier and Terminer, as in the caſe now in queſtion concerning the Eccleſiaſtical Commiſſion, and eſpecially in this Act of primo it ought to be taken to be horrible, exorbitant, & extra omnem normam; for that the High Commiſſioners do claim to ſend for all degrees of men and women, and out of all the parts of England or Wales, be the place never ſo remote, &c. But the Commiſſion of Dier and Terminer cannot be taken but in the proper County where the fact was done. And yet it is evident by all which hath been ſaid, that his Majeſty hath, and Queen Elizabeth before him had, as great and ample ſupremacy and juriſdiction Eccleſiaſtical as ever King of England had before them, and that had juſtly and rightly pertained to them by divers other Acts, and by the ancient Laws of England, if the ſaid claufe of Annexation in the ſaid Statute of 1 Eliz. had never been inſerted.

2 E.3. cap. 21

This Act of 1 Eliz. provideth againſt them that ſhould by printing, writing, or words, maintain or defend the juriſdiction Spiritual of any foreign Prince, Prelate, &c. within this Realm; that every ſuch perſon being lawfully convicted by the courſe of the Common Law, ſhall for the firſt offence forfeit and loſe all his and their goods and chattels. And if any perſon ſo convicted ſhall not be worth of his proper goods and chattels to the value of 20 l. then ſuch perſon ſo convicted ſhall ſuffer impriſonment one whole year, &c. Now albeit upon the maintenance or defence of the Popes Supremacy depend ſo many miſchiefs as the principal ſcope of this and other Acts was utterly to abolith and extinguish the ſame, and that it is High Treason in the ſecond degree: yet ſee how temperately this Act doth puniſh that moſt dangerous and damnable error. And albeit the proceedings at the Common Law are reverſible by Writ of Error; yet the Statute addeth two cautions, that no perſons ſhould be impeached for any of the offences by preaching, teaching, or words, unleſs they be lawfully indicted within the ſpace of one half year. And if any perſon be impriſoned, and be not indicted within half a year, then the perſon ſo impriſoned, ſhall be ſet at liberty. Now if the party offending in ſo high and ſupream an offence, as the maintaining of the Popes Supremacy, ſhall be puniſhed for the firſt offence ſo temperately, and with ſuch caution and limitation, it was never the meaning of the Statute to charge the ſubject with fine or impriſonment by the diſcretion of the Commiſſioners without limitation either of time of impriſonment, or quantity of fine, for leſſer crimes and offences, whereunto he was not ſubject before the making of this Act.

But



But if the meaning of the Makers of the Act had been to have inflicted new-ly upon the Subject not only fine and imprisonment, but by the same reason confiscation of goods, forfeiture of lands, nay any corporal punishment, &c. they would not under such cloudy & dark words have inflicted those greater punishments for lesser offences without some limitation, as they did for the greatest offences of all, and not to have left lesser offences to the absolute and uncontrollable power of the High Commissioners by any ordinary mean.

If the High Commissioners might have fined and imprisoned men for offences against the Ecclesiastical Laws, to what end were the Statutes of 23 Eliz. 28 Eliz. &c. made against men for abstaining and not coming to Divine Service, &c. and why did those Acts inflict a penalty, of 20 l. the month, and imprisonment, &c. with a discharge of the penalty, &c. upon submission, if the High Commissioners might have fined and imprisoned them absolutely without certainty of any sum, or limitation of any time of imprisonment, and without any ability or power by submission or conformity to ease themselves? And yet absence from Divine Service is a mere Ecclesiastical cause; and the like may be said of divers other Acts of Parliament of like nature.

Thus hath this Statute been plainly expounded by the parts of the same, according to the natural and genuine sense, and the original institution and jurisdiction of the High Commission by force of the said Act truly expressed.

And concerning the form of Commissions and practice by the High Commissioners in the reign of the late Queen Eliz. by fining and imprisoning for adultery, fornication, simony, usury, defamation, &c. it may be that such fines have been imposed, but, as we be informed, not one of them levied in all the reign of Queen Eliz. by any judicial process out of the Exchequer in the time of Sir Edw. Sanders, who was Chief Baron at the time of the making of the said Act, Sir Rob. Bell, Sir John Jefferies, Sir Roger Manwood, or Sir Will. Peryam Chief Barons of the Exchequer: So as in all the late Queens time (as we be informed) no fine was levied, or any subject in his body, lands or goods charged therewith, which would not have been by so many worthy men assisted with divers other grave and learned Barons pretermitted to be either levied or written for by the Court, if by Law the same ought to have been levied. And the Subjects (for the greatest part) being wrongfully fined, imprisoned, and injured by colour of the High Commission, asked no advise to take any ordinary remedy, for that the High Commissioners (knowing the weakness of their Authority) kept the Commission secret, and contrary to Law and justice suffered not the same to be introlled in the Chancery, so as the Subject lived under an unknown Commission and Authority (& Misera est servitus ubi jus est vagum aut incognitum) until of late the Lord Chancellor (as hath been said) according to Law caused the same to be introlled; and very few upon serious consideration took an exact survey of all the parts of the Act of 1 El. And this is the cause why their Presidents (if they affirm truly) may be many, especially against the weaker sort: and the judgments and Presidents in the Kings Courts concerning these matters, few, as they give out, charging the Judges of the Realm with Innovation. And yet some being intollerably grieved, sometime to their utter undoing, by the High Commissioners, upon complaint made to the highest Courts of ordinary Justice in this Realm, the Judges upon consideration had of the Statute of 1 El. which is the foundation whereupon the High Commission is grounded, have, as often as complaint hath been made, relieved them according to Law and justice.

In Atmeres case the whole Court of Exchequer in the late Queens reign, judicially resolved, being the Kings proper Court, that the High Commissioners could not punish any man for working on a Holy day, albeit it be a matter of Ecclesiastical consueance, but ought by the true meaning of the Statute of 1 El. to be punished by the Diocesan, which is to be seen of Record.

Also in the reign of Queen Eliz. William Taylor Clerk, Parson of Springfield in Essex did implead William Massy Gent. before the High Commissioners for giving unreverent speeches to the Minister, &c. for carrying his Coyn on Holy days,

Taylor's case.  
Mich. 44 & 45 El.  
Rot. 1255.  
Simile 43 & 44.  
El. Rot. 503.



days, for not suffering the Parson and Parishioners to come thorow his pard in Rogation week in the perambulation, and not giving them a repast as usually he had done, that he whistled and knocked on the Parsons Earn door, and said he did it to make him musick for his daughters marriage, and many other Articles of like nature; and it was ruled upon open motion, and often debating by the whole Court of Common pleas, that the High Commissioners could not deal with such inferiour offences, but are to be left to the proper Diocesan, who is to reform the same with less charge and travel in the proper Diocese. And thereupon a Prohibition was granted by the Court of Common pleas, whereby it appeareth, that they cannot hold plea of all Ecclesiastical causes.

The like Prohibition was granted out of the Common pleas in the said late Queens reign, between Robert Pool Clerk Parson of Winchelsey, and Thomas Gray, to the High Commissioners, for that they held plea for assaulting and laying violent hands on the said Robert Pool being a Parson, upon open motion and argument by the whole Court.

Hil. 3 Jac. Regis, in Communi Banco, between Lyn and Wats for promise of a yearly sum in marriage.

\* Trin. 3 Jac. in Communi Banco, between Jeneway Parson of T. in Essex, and Porter for defamation and laying violent hands on a Clerk.

a And concerning fine and imprisonment, Anno 9 Reginae Eliz. which was about eight years after the Statute of 1 Eliz. Sir James Dier and divers other of the Judges were then living, that were present at the making of the said Statute. Thomas Lee an Atturney of the Common pleas, being convented before the High Commissioners for hearing of a Wasse, was by them in their proceedings committed to prison, which matter being returned by Habeas Corpus, he was upon great consideration had by the Lord Dier and the whole Court of Common pleas discharged of his imprisonment, for that the High Commission had no power to imprison him in that case.

The like resolution was in 18 Eliz. by the Lord Dier, and the whole Court of Common pleas, in the case of one Hinde, who being convented before the High Commissioners for Usury, to answer, &c. was thereupon imprisoned by them, and by Hab. Corpus delivered, for that the imprisonment in that case was unlawful.

By warrant from the High Commissioners in the Reign of Queen Eliz. directed to Richard Butler Constable of Aldrington in the County of Northampton, for attaching and arresting of the body of John Simpson of Aldrington aforesaid, and bringing his body before the High Commissioners in case of Adultery with the wife of Edward Fulte, the Constable being assisted with one William Johnson servant of the said Edward Fulte, the said Constable with Johnson came to a Widows house in Aldrington where the said Simpson was, and the doors being open would have at eight of the Clock at night arrested Simpson by the said Warrant, which the said Constable read unto him, notwithstanding the said Simpson resisted them, and in his own defence (and shewed how) slew the said Johnson that came in aid of the said Constable. Now the question before the Justices of Assise of that County, (Simpson being in the Gaol therein) what his offence was? wherein the doubt rested in this, whether the Constable might lawfully attach and arrest the body of the said Simpson, (which in Law is an imprisonment) for if he had lawful authority to arrest him, then the offence was wilful murder in killing one that came in aid of a Minister of Justice in execution of his office: but if the Constable had no lawful authority to arrest his body by force of the High Commissioners Warrant, then was it but se defendendo, a small offence, which doubt wholly consisted upon construction of the Statute of 1 Eliz. for by the Letters Patents express authority is given to the High Commissioners to send for the body of any offender, &c. by Pursivant, or by Warrant. The matter being weighty, and the said Simpson being by the Coroners inquest indicted of wilful murder, supposing the said Warrant to be lawful, the Justices of Assise thought not good to proceed against him at those Assises, but deferred it till the next Assises: At what time, after this long time of delibera-

Graves case.  
Vid. infra p. 334.  
Trin. 44 El. Rot.  
1233. in Com.  
Banco.  
Simile 40 Eliz.  
Rot. 422. in Com.  
Banco.  
The like in the  
Kings Bench.  
Pasch. 39 Eliz.  
Rot. 100. &  
Pasch. 41 Eliz.  
ibidem Rot. 235.  
\* Tr. 3 Jac. in  
Com. Banco.  
Porters case.  
2 Mic. 9 & 10 El.  
Rot. 1556. Lees  
case.

18 El. Dier fo.  
Hindes case.

Simpsons case be-  
fore the Judges of  
Assise in Nor-  
thamptonshire,  
42 Eliz.



Supra pag. 133.  
Graves case.

William Thicknes  
case, in Communi  
Banco.

25 H.8. cap. 19.

tion, and upon conference it was resolved, that the Statute of 1 Eliz. gave no power to the High Commissioners to make any Warrant to arrest the body of Simpson in that case, but ought to have proceeded by Citation: and therefore that Simpson killing the said Johnson had committed no murder; and so the Jury upon his arraignment found him not guilty of murder according to the direction of the Court, as it appeareth by the Record it self. And it was resolved in Graves case aforesaid, that for the battery of a Minister they could not fine and imprison.

William Thicknes having the privilege of the Court of Common pleas, had a Habeas Corpus to the Sheriff of London for his body, with the cause, he being under their custody, who returned that the High Commissioners had committed him to their custody by force of his Majesties Commission for causes Ecclesiastical, and of the Statute in that case provided, for that he was convicted before them of Adultery, and other contempts and enormities appertaining to Ecclesiastical consueance. And the case being debated in open Court, he was discharged of his imprisonment, for that by the Statute of 1 El. they could not imprison him.

By the Statute of 25 H.8. cap. 19. it is enacted, that for lack of Justice at or within any of the Courts of the Archbishops of this Realm, or in any of the Kings Dominions, it shall be lawful to the parties grieved to appeal to the Kings Court of Chancery, and that upon every such appeal Commissions shall be directed under the Great Seal to such persons as shall be named by the Kings Highness, &c. which Commissioners so by the Kings Highness, &c. to be named or appointed, shall have full power and authority to hear and finally determine such Appeal, and that such judgment and sentence as the said Commissioners shall make and decree in and upon such Appeal, shall be good, effectual, and definitive. Which words, albeit they be more general, and with less reference to the precedent matter, then the Act of 1 El. yet have such Commissioners no colour to fine or imprison any: but where the words be [and such judgment and sentence as the said Commissioners shall make and decree] these general words have these words implicate annexed to them [according to the Ecclesiastical Laws] shall be good, effectual, &c. So in the Statute of 1 Eliz. such words are implicate to be added to the said clause, viz. That the High Commissioners shall execute the premisses according to the said Letters Patents by the rule of the Ecclesiastical Law or Authority of Parliament. And since the High Commission was inrolled and made publick, many prohibitions have been granted according to Law and Justice upon complaint made by the parties grieved.

And in the Reign of the said late Queen Eliz. it was resolved, that the High Commission should be limited to certain particular enormous and exorbitant causes, which if it were pursued would breed great quiet and repose within the Realm.

In the Reign of the said late Queen a Prohibition was granted by Sir James Dier Chief Justice, and the whole Court of Common pleas, 10 Februarii Anno 21 Eliz. to the High Commissioners for that they did hold plea de jure Advocationis.

*a* And in my Lord Andersons time in the Reign of Queen Elizabeth the Court of Common pleas granted divers Prohibitions, as it appeareth before, and two of special note *b* between Baker and Broughton, and another between Blackheath and the Bishop of Gloucester. And in my Lord Gaudies time who succeeded the Lord Anderson, and enjoyed his place but a short time, yet in that time the Court of Common Pleas granted Prohibitions also to the High Commissioners.

Many other Prohibitions have been granted to the High Commissioners out of the Court of Common pleas of after times.

In the Kings Bench there are also many Prohibitions granted to the High Commissioners in the times of the Lord Wray, Lord Popham, Lord Fleming, &c. which are to the same effect as those which have been cited be.

And we will conclude with the confession of the Lord Archbishop Bancroft him-

See Hil. 17 El.  
Rot. 1402. Inter  
Henr. Evans Cle-  
ricum querens &  
Thomam Jefferies  
Clericum Defen-  
dent.

*a* Hil. 3 Jac.  
*b* Mich. 41 & 42  
El. Rot. 2919.  
and an Attach-  
ment thereupon.  
Mich. 42 & 43 El.  
Rot. 3332.



himself in his 22 Article, his own words being : Of latter days, whereas certain leud persons, (two for examples sake) one for notorious adultery and other intolerable contempts, and another for abusing of a Bilhop of this Kingdom by threatning speeches and sundry railing terms, no way to be endured, were thereupon fined and imprisoned by the High Commissioners till they should enter into bonds to perform further orders of the said Court, the one was delivered by *Habeas Corpus* out of the Kings Bench, and the other by a like Writ out of the Common pleas, and sundry other Prohibitions have been likewise awarded to his Majesties said Commissioners upon these suggestions, that they had no authority to fine or imprison any man, &c.

See the Articles and answer in the 2 part of the Institutes, in the Exposition of *Articuli Cleri*, &c.

By this Article it appeareth, that befoze the time of the Chief Justice of the Court of Common pleas that now is, and befoze divers of the Judges that now be, were called to be Judges by the judgment and resolution both of the Court of Kings Bench and Common pleas by *Habeas Corpus*, the parties that were fined and imprisoned by the High Commissioners in case of Adultery and scandal of a Bishop, &c. were by the Law discharged, for that the fining and imprisonment of them was unlawful.

And these were the resolutions of the whole Court of Common pleas Pasch. 9 Jacobi Regis, upon often conference and mature deliberation, and accordingly they proceeded.

### ¶ The Prerogative Court of the Archbishop of Canterbury.

#### *Curia Prærogativa Archiepiscopi Cantuariensis.*

This is the Court wherein all Testaments be proved, and all Administrations granted, where the party dying within his Province hath bona notabilia, in some other Diocess then where he dieth, which regularly is to be to the value of 5 l. but in the Diocess of London it is 10 l. by composition.

The Bishops, Lords and Commons assented in full Parliament, that the King, his heirs and successors might lawfully make their Testaments, and that execution shall be done of the same, whereof some doubt was made befoze. See Rot. Par. 1 H. 5. nu. 13. the Testament of King H. 4. and his Executors refused, the Archbishop of Canterbury was to grant Administration with the Testament annexed to the same. See 1 H. 6. nu. 18. the last Will and Executors of H. 5. 10 H. 6. nu. 27.

Rot. Pat. 16 R. 2. nu. 10. not in print.

When the King is made an Executor of the last Will and Testament of any other, the King doth appoint certain persons to take the execution of the Will upon them (against whom such as have cause of suit may bring their Action) and appointeth others to take the Account. See Rot. Par. 15 H. 6. Katherine Queen Dowager of England, mother of H. 6. made her last Will and Testament, and thereof constituted King H. 6. her sole Executor. And thereupon the King appointed Robert Rolleston, Clerk, Keeper of the great Wardrobe, John Meriton, and Richard Alreed Esquires, to execute the said Will by the oversight of the Cardinal, the Duke of Glouc', and the Bishop of Linc', or two of them to whom they should account.

Rot. Par. 15 H. 6. nu. 32. Obit 2 Junii 1436. apud Bermondsey.

The Probate of every Bishops Testament or granting of Administration of his goods, although he hath not goods but within his own jurisdiction, doth belong to the Archbishop.

The like Court the Archbishop of York hath.

From this Court the Appeal is to the King in Chancery. Now touching the jurisdiction of this Court, and the Consistories of Bishops, &c. such points as have been judicially resolved, are necessary to be remembered, both for the safety of the Judge, and the benefit of the party interested.



If a man die intestate having bona notabilia in divers Diocesses, the Judges of this Court hath used to assess a convenient sum to be employed in pios usus, but with these limitations following: 1. It must be after Administration granted, and the Inventory made and returned, to the end the Estate of the Intestate may be known. 2. The Administrator before any assessment must be called to it, to the intent the Judge may be informed of the true state of the Intestate, and of his children and kindred, for whose succour and relief there is great piety. 3. The assessment must be in particular, how much, to whom, and to what use. 4. There must a publick Act be made of it before any payment be made. 5. Payment must be made according to the Act. Lastly, the Judge ought not directly or indirectly to take any thing thereof to his own use, nor for the Assessment thereof, or entering the publick Act, and if he doth, it is Extortion.

Mich. 20 Jac. in  
Camera Stellata.

And Termino Mich. 20 Jacobi Regis, Sir John Bennet Judge of this Court, for not observing of these rules was sentenced in the Star-chamber for Extortion, and fined at twenty thousand pounds, imprisoned, and disabled ever after to bear an office, as by the sentence appeareth. And the like orders and rules must be observed in all respects (saving the two former) in commutation of penance, which two former do not concern this matter. And these rules as well concerning assessments in pios usus, upon granting of Administrations, as for commutation of penance, may serve for the direction of all the Ordinaries and Judges in Ecclesiastical Courts in England.

21 H. 8. cap. 5.  
Mich. 6 Jac. Reg.  
Rot. 1301. in  
Communi Banco.

There was an Act made Anno 21 H. 8. concerning fees for probate of Last Wills and Testaments, and granting of Administrations. In the case of James Rowse Commissary of the Archdeacon of Huntingdon, in an Information against him by Edmond Neale, for Extortion upon the said Statute of 21 H. 8. whereunto he pleaded not guilty, and was found guilty, the point in question upon the Information was, if the Probate be not written upon the Testament it self, but upon the Transcript ingrossed, whether the taking of a fee by the Defendant for the ingrossing were within the said Statute? And it was upon debate in open Court resolved by the Chief Justice, and the rest of the Justices, Walmsly, Warburton, Foster and Daniel, that such a fee taken for the ingrossing was within the Statute, for that the Act is in the Negative. And if the Executor request any to ingross the Testament, he must agree with him, that he so request (or \* bring one ready ingrossed with him as he did in the case in question, which is a safe and ready way) but the Ordinary or Commissary ought not to exact a fee for it of the party as a fee due to him, for divers causes. First, for that the words are expresse for the Probation, &c. or for Registering, Sealing, writing, praising, making of Inventories, &c. which word (writing) extends to this case. Secondly, the words be, or any thing concerning the same Probate, and when the Seal and Probate is put to the Transcript, this concerns the Probate, for the Probate is not put to any other writing. Thirdly, if such a construction should be made, that this case is out of the Statute, this beneficial Law should be illusory and vain; for if the Ordinary or his Commissary might take what he would for the ingrossing by his Clerks as a fee due to him, the Act should be of none effect; and the manner of the precise penning of the Act and the certainty of the fees, and not above, should be all in vain. And the Ordinary, if he will, may annex the Probate to the Testament it self, as seeing he can have no other fee then is in the Statute, it may be hereafter he will do: but for the misreciting of the Act of 21 H. 8. in the Information, Curia advisare vult: and this resolution extending to all Courts of Ecclesiastical Jurisdiction that have Probate of Testaments, we thought it necessary to make a memorial of it.

See the 3 part of  
the Infl. Cap.  
Extortion.

See the Act.

\* Note this.

See the words of  
the Act at large.



¶ *The Court of the Arches of the Archbishop of Canterbury.*

This Court is called Curia de Arcubus, and hath been anciently holden in Bow Church of London. For I read of it in a Record of a Prohibition Termino Hil. coram Rege Anno 7 E.1. Rot.8. in Curia Christianitatis coram Decano de Arcubus London, Of Bow Church in London, where the Court hath continually been kept, which and 12 other Parishes in London, whereof Bow is the chief, are within the peculiar jurisdiction in spiritual causes of the Archbishop of Canterbury, and exempt from the Bishop of London.

The Judge of this Court is called the Dean of the Arches, unto whose officiate in spiritual causes to the Archbishop of Canterbury is annexed the peculiar jurisdiction of these 13 Parishes. He hath ordinary jurisdiction in spiritual causes of the first instance, and by Appeal through the whole Province of Canterbury, as it appeareth by the Statute of 24 H.8. cap.12. His power to call any person for any cause out of any part of his Province in the Diocess of any other, unless it be upon appeal, is restrained by the Statute of 21 H.8. cap.9. This Court in the Statute of 25 H.8. cap.19. is called the Court of the Arches or Audience of the Archbishop of Canterbury: and from this Court of the Arches the Appeal is to the King in Chancery by the said Act of 25 H.8.

Hil. 7 E.1. coram Rege Rot.8.  
Per 12 E.1. in Banco. Essex. Guilielmus de Mortuo mari Clericus, &c.  
See Dier 7 Eliz. 241.

24 H.8. cap.12.  
1 Eliz. cap.1.  
21 H.8. cap.9.  
25 H.8. cap.19.

¶ *The Court of Audience. Curia audientie Cantuariensis.*

This Court is kept by the Archbishop in his Palace, and medleth not with any matter between party and party of contentious jurisdiction, but dealeth with matters pro forma, as confirmations of Bishops Elections, Consecrations, and the like, and with matters of voluntary jurisdiction, as the granting of the guardianship of the spiritualties sede vacante of Bishops, admission and institution to Benefices, dispensing with banes of Patrimony, and such like.

¶ *The Court of the Faculties.*

This is also a Court, although it holdeth no plea of controverſie (like the Court of Audience next before.) It belongeth to the Archbishop, and his Officer is called Magister ad Facultates. And his power is to grant Dispensations, as to marry, to eat flesh on days prohibited, (and so may every Diocesan) the Son to succeed his Father in his Benefice, one to have two or more Benefices incompatible, &c. It is called Faculties in the Statute of 28 H.8. which in one sense signifieth a dispensation. So as facultates, (in this sense) dispensationes & indulgentia are synonyma.

This authority was raised and given to the Archbishop of Canterbury by the Statute of 25 H.8. cap.21. whereby authority is given to the said Archbishop and his successors to grant Dispensations, Faculties, &c. by himself or sufficient and substantial \* Commissary or Deputy for any such matter, whereof heretofore such dispensations, faculties, &c. then had been accustomed to be had at the See of Rome, or by authority thereof. *a* This Branch of this Act you shall find pleaded. Lib. plac' Co. pag. 512, 513.

*b* Concerning the power of the Archbishop to grant Dispensations to any to eat flesh on Fridays, Saturdays, Emburying days, Vigils, and Lent, the same is limited by the Statute of 5 Eliz. cap.5. And the penalty of 5 Eliz. in that case is diminished and made less by 35 Eliz. cap.7. Note the Statute of 5 Eliz. concerning eating of flesh on Wednesdays is repealed by 27 Eliz. ca.11. which Act of 27 Eliz. is affirmed by the Act of 35 Eliz. at by 21 Jac. cap.28. and expressly by the Statute of 3 Caroli cap.4.

Vi. 28 H.8. ca.16.  
21 H.8. cap.13.  
5 Eliz. cap.16.

\* Commonly called the Master of the Faculties.

*a* Trin. 44 Eliz. in Com. Banco. Rot. 1525. lib. 4. f. 117.  
Lib. Pl. Co. pag. 512, 513.  
*b* 2 E.6. cap.19.  
5 E.6. cap.3.  
See the third part of the Instit. cap. Dier pag. 200.  
5 Eliz. ca.5.  
35 Eliz. cap.7.  
27 Eliz. cap.11.  
Lib. Pl. Co. 371.  
27 Eliz. ca.11.  
3 Caroli ca.4.  
Vid. 35 Eliz. c.7.



¶ *Curia Peculiarium.* The Court of Peculiars:

The Archbishop of Canterbury hath a peculiar Jurisdiction in divers Parishes within the City of London and other Diocesses, &c.

¶ *The Consistory Courts of the Archbishops and Bishops.*

See Lit. Sect. 133.  
136.648.

24 H.4. cap. 12.

Rot. claus. 30 H. 3.  
m. 4. mandatum est  
Thom. de Stanford  
&c.

Ro. Pat. 13 E. 1.  
m. 21. Rex licent.  
dedit Episcop.  
Bangor, &c.

\* It is said that this  
was given by the  
Bishops being se-  
cular persons Ec-  
clesiastical for all  
the secular Clergy.

The Consistory Court of every Archbishop and Bishop of every Diocess in Ecclesiastical causes is holden before his Chancellor in his Cathedral Church, or before his Commissary in places of the Diocess far remote and distant from the Bishops Consistory, so as the Chancellor cannot call them to the Consistory, without great travail and vexation: and he is called Commissarius foraneus. From these the appeal is to the Archbishop of either Province respectively: when Consistories of Archbishops and Bishops began within this Realm, see before in the Chapter of the Tourn of the Sheriff.

It appeareth by many Records in the Reigns of H. 3. and E. 1. (as taking some one or two examples for many) that by the Law and Custom of England no Bishop could make his will of his goods or chattels coming of his Bishoprick, &c. without the Kings Licence. The Bishops that they might freely make their Wills, yielded to give to the King after their deceases respectively for ever Sir things. 1. \* Their best Horse or Palfrey with bridle and saddle. 2. A Cloak with a Cape. 3. One Cup with a cover. 4. One Basin and Cover. 5. One Ring of Gold. 6. His Kennel of Hounds. For these a Writ issueth out of the Exchequer after the decease of every Bishop: For example. Rex, &c. Vic' Eborum. Præcipimus tibi, quod non omittas propter aliquam libertatem, quin etiam ingred' & distring' omnes executores testamenti & ultimæ voluntatis reverendissimi in Christo patris Matthæi nuper Archiepiscopi Eborum defuncti, ac administratores & occupatores bonorum & catallorum quæ fuer' dicti nuper Archiepiscopi, necnon hæred' & tenent' terrarum & tenent' quæ nuper sua fuer' per omnes terras & catalla sua in balliva tua. Ita quod nec ipsi nec aliquis per ipsos ad ea man' apponit donec al' inde tibi præceperimus. Et quod de exitibus earundem terrarum nobis respondend', & quod habeas corpora eorum coram Baronibus de Scaccario nostro apud Westm' a die Paschæ in tres septimanas ad respondend' nobis de uno optimo equo sive palfrido cum cello & fræno. Una chlamyde sive cloca cum capella. Uno cithro cum coopertorio. Uno pelve cum lavatorio sive aquar' & uno annulo aureo, nec non \* muta canum quæ nuper fuer' ejusdem nuper Archiepiscopi tempore mortis suæ; & quæ ad nos ratione prærogativæ nostræ spectant & pertinent' & de precio sive valore inde, unde nobis nondum est respons'. Et habeas ibi tunc nomina executorum & aliorum prædict' & hoc Breve.

Mutes de Chéins  
of mut cometh  
muta, signifying a  
Kennel.

Int. com. de Hil.  
2 E. 2. In Scaccar.  
Proces. vers.  
Episc. de Bath &  
Wells.

The most ancient of this kind that we find and remember (but certainly there were such Writs before) is inter Memorand' de Scaccario Anno 2 E. 2. the Bishop of Bath and Wells case. Tr. 36 E. 3. ibid. In cornia. The Bishop of Chelsters case. Hil. 5. ibid. adjudge upon demurrer, that the duty being to the King after the decease of every Bishop, it extendeth to an Archbishop, the Archbishop of Yorks case, for every Archbishop is a Bishop. It is sometimes called multura or mulctura de Episcopis, sometime monutier, &c. The King by verdict of twelve recovered ten thousand Marks against the Bishop of Norwich for that he prosecuted against the Abbot of S. Edmonds Bury to appear before him against the Kings Prohibition. for which it was adjudged that his temporalities should be seised and his body taken.

Mlch. 19 E. coram  
Rege Rot 157.  
Norff. Tr. 21 E. 3.  
Rot. 170. coram Rege  
21 E. 3. fo. 60.

\* 3 R. 2. cap. 3.  
7 H. 4. cap. 12.  
1 H. 5. cap. 7. Rot.  
Parl. 6 H. 4. nu. 48.  
4 H. 6. nu. 29.

\* Upon consideration had of the Statutes of 3 R. 2. 7 H. 4. 1 H. 5. & Rot Parl. 6 H. 4. nu. 48. & 4 H. 6. nu. 29. If an Alien or Stranger born be presented to a Benefice, the Bishop ought not to admit him, but may lawfully refuse him; which we have added, for that the Abridgments or late Impressions may deceive you.

¶ *The Court of the Archdeacon, or his Commissary.*

This Court is to be holden where and in what places the Archdeacon either by prescription or composition hath jurisdiction in Spiritual causes within his Archdeaconry. And from him the Appeal is to the Diocesan. He is called Oculus Episcopi. 24 H. 8. cap. 12.

In some Acts of Parliament and many Records and Histories you shall read of the Bishops Pall, Pallium Episcopale. It is a Hood of white Wool, to be worn as Doctors Hoods be upon the shoulders, with four Crosses woven into it, &c. the form and colours thereof you may see in the Book De antiquitate Britannicæ Ecclesiæ pag. 1. for a Pall is the Arms belonging to the See of Canterbury, and therefore expressed there and commonly in other places.

Palla est vestis qua Altare cooperitur, viz. ut lineus pannus consecratus qui super Altare ponitur, super quem extenditur Corporale.

The Clergy petitioned in Parliament that of every Consultation conditional, the Ordinary may of himself take upon him the true understanding thereof, and therein proceed accordingly. Parl. 51 E. 3. n. 83.

Whereunto the Kings answer was, That the King cannot depart with his right, but to yield to his subjects according to Law. *Nota hoc, & stude bene.*

¶ *The Court of Delegates, and consequently of Appeals.*

It is so vulgarly called, because these Delegates do sit by force of the Kings Commission under the Great Seal upon an Appeal to the King in the Court of Chancery in three causes. First, When a Sentence is given in any Ecclesiastical cause by the Archbishop or his Official. Secondly, When any sentence is given in any Ecclesiastical cause in places exempt. Thirdly, When a sentence is given in the Admiral Court in suits civil and marine by the order of the Civil Law. And these Commissioners are called Delegates, because they are delegated by the Kings Commission for these purposes. 25 H. 8. cap. 19.

Now because we have generally spoken of Appeals in Ecclesiastical causes, which are grounded upon Acts of Parliament, it shall be pertinent to our purpose to set down the resolution of the Judges, and of the learned in the Ecclesiastical Law, which doth sum up in what causes, from what Courts, and in what time Appeals are to be made, and other necessary incidents concerning the same, as the Lord Dier under his own hand hath reported, but are left out of the print, and yet worthy to be known and published, which you shall hear in his own words and language.

¶ *Of Appeals.*

First, In cases Testamentary, Patrimony and Tithes, from the Archdeacon or his Official, if the matter be there commenced, to the Bishop of the Diocese, and from the Bishop Diocesan or his Commissary in such case, or if the matter be there commenced, within fifteen days after sentence given, to the Archbishop of the Province, and no further. 24 H. 8. cap. 12.

Item, from the Archdeacon or Commissary of the Archbishop, if the matter be there commenced within fifteen days, &c. to the Audience or Arches of the said Archbishop: and from thence within other fifteen days, &c. to the Archbishop himself, and no further. And if the case be commenced before the Archbishop, then to be there definitively determined without further Appeal.

Item, where the matter toucheth the King, the Appeal within fifteen days to be

See infra, this is altered by the statute of 25 H. 8. in the next pag.



be made to the higher Convocation house of that Province, and no further, but finally to be there determined.

25 H. 8. cap. 19.

A general Prohibition, that no Appeals shall be pursued out of the Realm to Rome, or elsewhere.

¶ Vide supr. pag. precedent.

Item, a general Clause that all manner of Appeals, what matter soever they concern, shall be made in such manner, form and condition within the Realm, as it is above ordered by 24 H. 8. in the three Causes aforesaid; and one further degree in Appeals for all manner of Causes is given, viz. from the Archbishops Court to the King in his Chancery, where a Commission shall be awarded for the determination of the said Appeal, and from thence no further.

Item, that persons exempt shall likewise pursue their Appeal in the Chancery, ut supra, and not to the Archbishop.

Note, in case where a sentence is given by Commissioners delegates by the Prince, as by the late Visitors, An. 1 Eliz. the party grieved appealing, such appeal is out of the Orders prescribed by the said Statutes, and the Prince in that case may grant a new Commission to others to determine that Appeal. Et ceo fuit fait per l'opinion del plusors des Justices en le case de Goodman deprive del Deanery de Wells.

Nota, Stephen Gardener Eveque de Winton, fuit deprive al Lambeth per Commission del Roy E. 6. fait a 10 persons proceeding sur ceo ex officio mero mixto vel promotio omni appellatione remota summarie de plano, absque omni forma & figura judicii, sola facti veritate inspecta.

This case is in print, Dier fo. 209. d.

Et vide Mich. 3 & 4 Eliz. Coveney President del Novel Colledge in Oxon deprive per le Eveque de Winton, Visitor del dit Colledge, & exempt de tout jurisdiction ordinary fait appeale al Roy in son Chancery, & Commission illonque grant a A. Browne & Weston Justices, que sur conference ove auters Justices & Civilians, resolve que le appeale ne gilt, ne aucun autre remede pur le appellant pur ceo que celi case fuit hors del dit Statute de 24 & 25 H. 8. car cest deprivation est mere temporal, & come per ley prov'. Ex quo sequitur, que une assise gilt, &c.

Nota, in appellis per Doctorem Lewes Judic' Admiral' & al' &c. Forasmuch as an Appeal is a natural defence, it cannot be taken away by any Prince or power, and in every case generally when sentence is given, and appeal made to the superior, the Judge that did give the sentence is bound to obey the appeal, and proceed no further until the superior hath examined and determined the cause of appeal. Nevertheless where this clause (appellatione remota) is in the Commission, the Judge that gave sentence is not bound to obey the appeal, but may execute his sentence and proceed further, until the appeal be received by the superior, and an Inhibition be sent unto him: for that clause (appellatione remota) hath three notable effects. The first is, that the jurisdiction of the Judge that gave sentence, is not by the appeal suspended or stopped, for he may proceed, the same notwithstanding. The second, that for proceeding to execution or further process he is not punishable. The third, that those things that are done by the said Judge after such appeal cannot be said void, for they cannot be reversed per viam nullitatis.

\* Parliam. at Clarendon 10 H. 2. cap. 8.

Mat. Par. pa. 97.

\* Rot. claus. in dorf. anno 8 H. 3.

part 1. m. 29.

Rex Dublin Archiepis &c.

Rot. Parl. 18 E. 1.

Rot. 1. William de Valentia &c.

Rot. 3. nu. 39.

Wil. de Marcingham. acc.

See Hovenden

fol. 284.

But if the appeal be just and lawful, the superior Judge ought of right and equity to receive and admit the same, as he ought to do Justice to the subjects. And so if the cause of the appeal be just and lawful, he ought to reverse and revoke all mean Acts done after the said appeal in prejudice of the appellant. Thus far the Report of the Lord Dier truly translated.

\* At the Parliament holden at Clarendon called Assise de Clarendon An. 10 H. 2. cap. 8. the forms of Appeals in causes Ecclesiastical, are set down within the Realm, and none to be made out of the Realm. Ne quis appellat ad Dominum Papam. \* Rex ægre tulit appell' ad Papam in causa Bastardie, ut contra dignitatem Regis de Consilio igitur (the Record speaking in the person of the King) magnatum & fidelium nobis assistent vobis mandamus, firmiter injungentes quatenus non obstante appellatione premissa non differatis pro eo sententiam, &c. So as the first Article of the Statute of 25 H. 8. concerning the prohi-



prohibition of Appeals to Rome is declaratory of the ancient Law of the Realm.

\* And it is to be observed, that the first attempt of any Appeal to the See of Rome out of England was by Anselme Bishop of Canterbury, in the Reign of William Rufus, and yet it took no effect.

See 8 Eliz. cap. 5. an appeal in Civil and Marine causes before the Lord Admiral, &c. a sentence before Commissioners delegates is final.

See before pag. 125. upon a sentence given by the Constable and Marshal proceeding by the Civil Law in causa Armorum, there lyeth an appeal to the King, but none of the said Statutes extend to this kind of appeal.

See Rot. cl. Anno 30 H. 3. part 2. m. 11. de Appellatione pro Rege fac' in electione Abbatissæ de Shaftesbury.

\* Hayward Doctor of the Civil and Canon Law in the life of William 2. 8 Eliz. cap. 5.

### ¶ The Court of the Commissioners of Review, *ad Revidendum.*

Albeit the said Acts of 24 H. 8. and 25 H. 8. do upon certain appeals make the sentence definitive as to any appeal, for the words be [shall be definitive] and that no further appeal should be had; yet the King after such a definitive sentence, as supreme head, may grant a Commission of review, ad revidendum, &c. for 2 causes. 1. For that it is not restrained by the Statute. 2. For that after a definitive sentence the Pope as supreme head by the Canon Law used to grant a Commission ad revidend': and such authority as the Pope had, claiming as supreme head, both of right belong to the Crown, and is annexed therunto by the Statutes of 26 H. 8. ca. 1. and 1 Eliz. cap. 1. And so it was resolved in the Kings Bench Trin. 39 Eliz. where the case was, that sentence being given in an Ecclesiastical cause in the Country, the party grieved appealed according to the said Act of 25 H. 8. to the Archbishop, before whom the first sentence was affirmed. Whereupon according to the Statute of 25 H. 8. he appealed to the Delegates: before whom both the former sentences were repealed and made void by definitive sentence, and thereupon the Queen as supreme head granted a Commission of Review, ad revidend' the sentence of the Delegates. And upon this matter a Prohibition was prayed in the Kings Bench, pretending that the Commission of Review was against Law, for that the sentence before the Delegates was definitive by the Statute of 25 H. 8. But upon mature deliberation and debate the Prohibition was denied, for that the Commission for the causes above said, was resolved to be lawfully granted. In this case I being then the Queens Attorney was of Counsel to maintain the Queens power. And presidents were cited in this Court in Michelots case, Anno 29 Eliz. and in Goodmans case, and Huets case, in 29 Eliz. also. See the Statute of 8 Eliz. cap. 5. and observe like words in that Statute, ut supra.

24 H. 8. ubi supra,  
25 H. 8. ubi supra,

Trin. 39 Eliz. in the Kings Bench Hollingworths case. Lib. Intr. Raft. fol. 16. Appeal to Rome. Ib. Rome 389.

Upon a sentence given by the High Commissioners, a Commission of Review may be granted to and for the party grieved, as by an express clause within that Commission appeareth. And if no such clause had been therein, yet a Commission of Review might have been granted: Quia sicut fontes communicant aquas fluminibus cumulative, non privative; sic Rex subditis suis jurisdictionem communicat in causis Ecclesiasticis vigore Statuti in hujusmodi casu editi & provisi cumulative, non privative, by construction upon that Act.

The High Commissioners.

### Le Court des Conservators des privileges de St. Johns de Jerusalem, &c.

There were two Courts holden coram Conservatoribus privilegiorum, the one Hospitaliorum, and another Templariorum. Of whose jurisdiction, and of their restraint to grant any general Citations priusquam exprimatur super qua re



W.2. cap. 43.

feri debeat citatio, & si viderint hujusmodi conservatores quod petatur citatio de aliqua re cujus cognitio spectat ad forum regium, hujusmodi conservatores nec citationes faciant nec cognoscant, as by the Statute of W.2. appeareth.

See the Second part of the Institutes, the Exposition upon that Statute.

The Templers were dissolved in 4 E.2. and the Hospitlers in 32 H. 8. so as these Courts are determined.

Now for a conclusion concerning England, I have reserved to say somewhat for the honour, and supreme Estate of both the Relatives of our Sovereign Lord the King, and of this his Kingdom, which I conceive to be necessary to that which in this part of the Institutes we have taken in hand, for that it agreeth and strengtheneth all the rest.

24 H. cap. 12.

By the whole Parliament of 24 H.8. wherein, besides the Archbishops and Bishops of the Realm, there were 29 Abbots and Priors Lords of Parliament: It was resolved, and so declared by an Act, That by divers and sundry old antique Histories and Chronicles, it is manifestly declared and expressed, that this Realm of England is an Empire, and so hath been accepted in the world, &c.

Vid. Stat. de 28.  
cap. 2. in Hibernia.

But against the truth hereof, opposition hath been made. First, that this is the only Parliament that hath affirmed it. Secondly, that this Declaration is unjust and untrue, and that History or Chronicle doth not affirm the same.

Stat. de 16 R.2.  
cap. 5. An. domini  
1352.

As to the first I answer: that one Act of Parliament is instar omnium, being a proof of the unanswerable and highest nature, but this is not the only; for so much in effect (as to this point) is affirmed by all the Lords Spiritual and Temporal, and the Commons by Authority of Parliament long before the Reign of H.8. that the Crown of England hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality of the same Crown, and to no other.

Rot. Claus. 13 E.2.  
m. 6.

Publick Notaries made by the Emperour claimed de jure to exercise their offices here in England but because it was against the dignity of a supreme King, they were prohibited by the Kings Writ.

Draft. who wrote  
in the reign of H.3  
Lib. 1. ca. 8. nu. 5.  
Anno dom 1270.  
Int. leges Edvardi  
cap. 17.  
An. Dom 1250.

And long before, these by the ancient Law of the Crown of England, were due to the King. Omnis quidem sub rege, & ipse sub nullo, sed tantum sub Deo. (Et ibidem paulo post eodem numero) Ipse autem Rex non debet esse sub homine sed sub Deo, &c.

And therewith agreeth the Law before the Conquest. Rex autem, quia Vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum, & populum domini, & super omnia sanctam veneretur Ecclesiam ejus & regat, & ab injuriis defendat, & maleficos ab ea evellat, & destruat & penitus disperdat.

Anno Dom. 169.

And long before that Anno 169. à passione Christi dominus Elutherius Papa Lucio regi Britanniae scripsit, ad petitionem regis & procerum regni Britanniae. Petitis à nobis leges Romanas & Caesaris vobis transmitti, quibus in regno Britanniae uti voluistis: Leges Romanas & Caesaris semper reprobare possumus, legem Dei nequaquam. Suscepistis enim nuper miseratione divina in regno Britanniae legem & fidem Christi, habetis penes vos in regno utranque paginam, ex illis Dei gratia per consilium regni vestri sume legem, & per illam Dei patientia vestrum reges Britanniae regnum, Vicarius vero Dei estis in regno, &c. and higher I cannot go.

22 E.4. nu. 19.

And by the way it is to be observed in the several grants by Abbots and Priors made to King E.4. they severally stile him by these very words, Supremus Dominus noster E.4. Rex.

25 H.8. ca. 21.

And by three other Acts of Parliament, viz. by the Statute of 25 H.8. cap. 21. wherein by Authority of Parliament it is enacted and declared (directing their Declaration to the King) That this your Graces Realm recognizing no Superiour under God but only your Grace, hath been and is free from subjection to any mans Laws, but only to such as have been devised, made and ordained within this Realm for the wealth of the same, or to such other, as by sufferance of your Grace and your Progenitors, the people of this your Realm have taken at their free



free liberty by their own consent to be used amongst them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of the Laws of any forrain Prince, Potentate, or Prelate, but as to the custumed and ancient Laws of this Realm originally established as Laws of the same, by the said sufferance, consents and custom, and none otherwise.

And by the Statutes of 25 H.8. cap. 21. 1 El. cap. 1. and 1 Jac. cap. 1. the Crown of this Kingdom is affirmed to be an Imperial Crown. 25 H.8. cap. 21.  
1 El. cap. 1.  
1 Jac. cap. 1.  
\* Pl. Com. 398. b.  
Doct. & Stud. fo.  
164. cap. 55.

As to the second: I might answer \* that Le Court de Parliament est de tres-grand honor & Justice, de que nul home doit imaginer chose dishonorable. And with the Doctor and Student upon the Statute of 45 E.3. cap. That it cannot be thought that a Statute that is made by the Authority of the whole Realm as well of the King, and of the Lords Spiritual and Temporal, as of all the Commons, will recite a thing against the truth.

But to be short, King Edgar stiled and subscribed himself in his Charter, Basileus, Imperator & dominus, which you may read in the Preface to the Fourth part of my Reports. Vide Rot. Pat. 1 E.4. parte 6. m. 23. The like Charter  
to the house of  
Donnington by  
King Edgar.

Edward commonly called St. Edward son of King Edgar in a Charter which he made to the Abby of Ramsey (which I have) stiled himself, Ego Edwardus totius Albionis Dei moderante gubernatione basileus.

Another Charter of King Edwine to the Abby of Crowland intituled, Carta regis Edwini filii regis Edmundi fratris regis Edgari de terris in Jeckelea. Wherein he is stiled Edwinus Anglorum Rex & totius Britannicæ telluris gubernator & rector, and many others.

To conclude this point with a late and learned writer, whom I will cite for that he agreeth with the former Authorities, he saith, that the regal estate and dignity of a King is of two manners. The one is Imperial or Supream, such a one is our Sovereign Lady Elizabeth by the grace of God Queen of England, France and Ireland, which Sovereign Queen holdeth her Empire and Kingdoms with her people and Subjects immediately of the Lord of Heaven and Earth, without any other mean seigniorie or attendancy of corporal or bodily service or allegiance to any other worldly Prince or Potentate, maugre the head of either her forrain enemies or intestine and homeborn traiterous vassals, and also from her sentence (she and we all her faithful and loyal Subjects acknowledge to her estate no Superior) lyeth no Appeal. I.F. of the Inner  
Temple, in his  
book intituled,  
The glory of gene-  
rosity. p. 140, 141.

There is also a King, and he a Homager or Feudatory to the Estate and Majesty of another King as to his superiour Lord, &c. As that of Navar and Portugal to the King of Castell: the Kingdoms of Granado and Leons to Aragon: the Kingdoms of Lombardy, Sicill, Naples and Bohemia to the sacred Empire: the old Kingdom of Burgundy, and now the late erected title of the King of Arles, to the King of the French men; and so forth of the rest.

The King which is Supream and Imperial is equivalent within his Land to the power and authority that Cæsar can challenge within his own Dominions, and such a King challengeth of right to set upon his head a \* Crown Imperial with a Diadem elevated on high, to signifie the perfection and greatness of their estate; but to the other Kings homagers a Crown not elevated is due. And that we may (as duty is) both with reverence and dutiful fear discern and judge the office and function of our Sovereign to be most holy and sacred; let us see with what honors a Sovereign King (such a one as is her Majesty) is illustrated and made redoubted to his Subjects, first, what great Majesty, honor, power, and glory is intended by setting a Crown upon her head, for in the reverend and majestic Action of Coronation, she is first anointed, then blessed, after that consecrated; to signifie to her and unto us that she is of God, that her power is from Christ, and that she is to rule over Christian people: the Crown set on her head is called triumphant, and it is of gold to signifie her excellent Majesty; it is called triumphant by reason that the like Crown in fashion and form was given the Emperours and Captains of the Romans in their Triumphs over Kings and Nations. This Crown triumphant is most due to her excellent Majesty even

Nota:

\* A Crown Imperial.

With what Majesty crowned.

A Crown triumphant.



by the strict course of Laws of Arms, since that her ancestors have triumphed over many Kings and mighty people, as H. 1. over five Kings of Ireland E. 1. triumphed over the Scottish and Welch Nations. E. 3. and H. 5. both of them over France. In the triumphant Crown of our Sovereign Lady there be placed (not only for the ornament of her regal Diadem, but also to signify the Princely virtues of a King) twelve Gems or Stones of precious esteem.

And for this Kingdom of England, the other part of the Relative, hear what an ancient Poet hath said.

Bartholomæus.

Anglia gens fortis, & fertilis angulus orbis :

Insula prædices quæ toto vix eget orbe,

Et cujus totus indiget orbis ope.

Anglia plena jocis, gens libera & apta jocari,

Libera gens, cui libera mens, & libera lingua ;

Sed lingua melior liberiorque manus.

*The Answer to certain Objections against the Kings Stile of  
Defender of the Faith.*

This Bull you may see in Speeds Chronicle, p. 759. nu. 41. Anno domini 1521. 13 H. 8. See Laert. Cherub. Bullar. tom. 1. pag 619.

And where some do object that the King our Sovereign Lord ought not de jure to enjoy the title and stile of Defender of the Faith, Defensor fidei: for (say they) Pope Leo decimus, Anno Pontificatus sui, by his Bull granted the same to King H. 8. & posteris suis. Well, veritas à quocunque dicitur, à Deo est. But they say that by the Bull of Pope Paul the third, against King H. 8. upon his suppression of the lesser houses of Religion in Anno 27 H. 8. he did not only depose him of this title, but of his Crown also, and gave his Kingdom to him that could get it: which, say we, was done de facto, sed non de jure; and we confess also that by colour of that Bull, Pope July the third in his Bull to King Philip and Queen Mary his direction was Charissimis in Christo filiis nostris Philippo regi & Mariæ Reginae illustribus, wherein he omitted the title of Defender of the Faith: but besides the Popes Bull, which (as it seemeth) is countermandable at his pleasure, the King hath a surer right thereunto to this stile, for by the full consent of all the Lords Spiritual and Temporal and the Commons assembled in Parliament, and by Authority of the same, in Anno 35 H. 8. it is enacted, that all his Majesties subjects should from thenceforth accept and take his Majesties stile as it is declared and set forth in manner and form following, that is to say, in the Latine tongue by these words; Henricus octavus Dei gratia Angliæ, Franciæ, & Hiberniæ Rex, fidei defensor, & in terra Ecclesiæ Anglicanæ & Hiberniæ supremum caput: and in the English tongue by these words; Henry the Eighth by the Grace of God King of England, France, and Ireland, Defender of the Faith, and of the Church of England, and also of Ireland, in Earth supream head: and that the said stile should be from thenceforth by authority aforesaid united and annexed for ever to the Imperial Crown of his Highnesse Realm of England. Hereunto it is objected, that this Act of Parliament is repealed by the Act of 1 Mar. but that is mistaken, for as the treasons made and enacted by subsequent clauses of the said Act of 35 H. 1. are repealed by the Act of 1 Mar. but the stile and title of the Crown without question remaineth of force unrepealed; and accordingly Queen Mary in all her several Sessions of Parliament before her marriage and after her marriage, she and King Philip used the stile and title of Defender of the Faith in all their Parliaments, Letters Patents, &c. according to the said Act of 35 H. 8. and by the way she used the title also of Supremum Caput in the second Session of her Parliament in the first year of her reign. And by the resolution of the Judges in anno 1 Mar. it appeareth that the Statutes of 26 H. 8. cap. 1. & 35 H. 8. cap. 3. concerning the stile of the King remains in force, for thereupon did the question depend: so as albeit Pope July in his Bull vouchsafed not to give King Ph. & Q. Mary their stile of Defender of the Faith, yet both she before, and both of them after their marriage, according to their right took it upon them notwithstanding the thundring Bull of Pope Paul the third. Lastly, all the Kings and Queens

35 H. 8. cap. 3.

1 Mar. Dier 94.



Queens regnant of England have at their Coronation time out of mind bēn sworn to defend the faith, and therefore were of common right Defenders of the Faith: by reason of which Oath they may take upon them the Title, and are more firmly bound to perform and do it, then by the Popes Bull.

Having spoken of England, and of the petty Islands and Dominions of the same, and intending to speak of that noble Island and Kingdom of Ireland, I could not pass over that ancient and renowned Kingdom of Scotland wholly in silence, but as it were to salute it by the way, and yet to add somewhat, which none that have written of that Kingdom have (to my remembrance) touched.

## CAP. LXXV.

## Of Scotland.

**C** Concerning this Kingdom there are many things worthy of observation.

1. That these two mighty, famous, and ancient Kingdoms, viz. England and Scotland (I use the words of the Act of Parliament) were anciently but one. 1 Jac. Regis c. 1.

2. That one Religion and service of God is holden and celebrated by both. Vide 4 Jac. c. 10.

3. That as there is one Language in both, so there was one kind of government and one Law in ancient time that ruled both with many unanimous agreements between them, which evidently appeareth by many proofs. First, That the Laws of Scotland are divided as the Laws of England be into the Common Laws, Acts of Parliament, and Customs. Their Common Laws are principally contained in two Books. The first called Regiam Majestatem, because it be-  
ginneeth (as Justinians Institutes do) with these words [Regiam Majestatem.] 11 Jac. Regis c. 1.  
& 2 in Ireland.

The second Book is called Quoniam Attachiamenta, because it beginneeth with those two words.

The first Book doth in substance agree with our \* Glanvil, and most commonly de verbo in verbum, and many times our Glanvil is cited therein by special name.

\* First printed by the perswasion & procurement of Sir Will. Stanford a grave and lear-

ned Judge of the Common Pleas. *An. Dom. 1554.* 1 & 2 Ph. & Mar. Of whom hear what *Hovenden* saith *Anno Dom. 1180.* (& *regni H. 2. 26.*) *Henricus Rex Angliæ pater constituit Ranulphum de Glanvilla summum Justiciarium totius Angliæ, cujus sapientia conditæ sunt leges subscriptæ quas Anglicanas vocamus.* This *Hovenden* lived in the Reign of H. 2. and died in the time of King *John.* See *Pl. Com. 358. b.* per *Catlyn* in *Epist.* to the eighth Book of Reports.

2. The Crown of Scotland is descendible to the Daughter or Heir Female where there is no issue Male. If there be many Daughters or heirs Female, it descends to the eldest. Likewise they have the like descents of lands to Subjects as England hath, as none can inherit in the right Line ascendant. The eldest Daughter hath *initiam partem.* All the Daughters of Subjects do inherit.

3. They have the High Court of Parliament, as we in England have, and called by the same name, consisting of the same Members, viz. Lords Spiritual, Lords Temporal, and the Commons. It is summoned and called at the Kings pleasure for a certain time. When they meet, the King or his Chancellor sheweth the causes of calling them together. But there of latter times the Lords Spiritual do choose eight Temporal Lords, and the Lords Temporal choose eight Spiritual Lords. These sixteen make choice of eight chosen for the Counties, and eight of Cities and Burghes, in all thirty two. But whatsoever is agreed upon by them, the King doth allow or disallow by moving of his Scepter, &c.

4. They have the same degrees of Nobility, as Dukes, Marquesses, Earls, Viscounts, Barons, &c.

5. They have the same great Officers, as Chancellor, that keepeth the Great Seal, Lord Treasurer, Lord Privy Seal, Secretary, &c.

6. And



6. And the same Ministers of Justice, as Sheriffs, Coroners, &c.
7. The same Laws for the most part quarto modo appropriated to England, viz. Tenant by the curtesie, because they had the same Law that England had.
8. The like Writs, Brevia, as de Recto, Assise of Novel Disseisin, Mordanc', De gard', De Ideof inquirend' De divisis fac', Replegiar, Attachm', &c.
9. They agree with Magna Carta concerning Wardships, &c.
10. With Carta de foresta c. 11. for it is lawful for Bishops, Carls, and Barons coming or returning through the Kings Forests at the Kings command to kill one or two Beasts in the sight of the Forrester, or otherwise in his absence to blow his Horn, that he appear not to take it chievisly.
11. The Lord of whom the land is holden by Knights service per antiquis feoffamentum shall have the wardship of the body.
12. The Sheriffs should cause the Acts of Parliament to be proclaimed, &c. All which, and many more are the ancient Laws of both Kingdoms, as it appeareth in the said Books of Regiam Majestatem, & quoniam attachiamenta, &c.
13. The Sheriffs there have an inheritance in their Office, as sometime in England they had, and yet in Cumberland they have.
14. The same Vocables of art are used in the Laws of both Kingdoms, as Ordellium, i. the Court of Water and Iron, Filius mulieratus, Marchetum, Serplaith, or Sorpler, Judicamenta. &c. Machameum or Mahemium, Murdrum or Murcharum, Chancemeley, Mote, Misericordia, Messuagium, Flightwight, Medletum, Remanere, Manerium, Recognitio per Assisam, Pipowdres, Pannagium, Ora, Nonclayme, Soc, or Sok, Serjanteria, grand Serjeanty, pety Serjeanty, Sectator, a Suter, Sheriffs of inheritance there, the Sheriffs Court or County Court, Toll, Tunbrellum or Tumbrellum, Thainus, Soccage, Burgage, Servitium militare, Relief or Relieve, Them and Teme, Thesibote, In libera Eleemosyna, Terræ Dominicales, Liberum tenementum, Vidiare duellum, Warrenna, or Varenna, Valvafores or Vavafores, Waif, Stray, Castlemard, Veredictum, Viridarii, Infangthief, Outfangthief, Outlawry, Outlawed, Justice in Cir, Wreck of the Sea, Wouch-er, Vicenetur, Hamsockne, Hida terræ, Bovata terræ, Heriot or Heregeld, Hutesium or Huesium, Regrateurs, Forestallers, a Guilde, falsifying of dooms or recoversry, Quarentena, Felonia, Feodum, Homage, Fealty, Estroverium, essonium, enitia pars, Disparagement, Disseisins, Disclaimer, Scaccarium, Collistrigium, Champertie, Maereminm, Averia, Catalla, Wote, Wodwite, Grand Assise, Assise of novel dissein', Waretors, Affidavit, Adjournment, Responsals, Attonies, and many others.

There was an Heptarchy in Scotland but now a Monarchy. There are there two Archbishops, the one of S. Andrew, the other of Glasco: S. Andrew hath eight Bishops under him, and Glasco thre.

There are there thirty Counties or Sherifdoms.

The ancient Motto of the King of England is, God and my right (*intelligitur*) shall me defend. Of the King of Scotland, In my defence God me defend.

There are also two famous Universities, one in S. Andrews, the other in Glasco.

The length of Scotland from Twede to the uttermost Coast is 480 Miles: it is longer then England, but narrower, and endeth like a Wedge.

Of ancient time all the Bishops of Scotland were sacred, and confirmed by the Archbishop of York.

But by reason of their Acts of Parliament, which in many points have altered, diminished, and abrogated many of the old, and made new Laws and other proceedings: the distinct Kingdoms as they now stand have many different Laws.

*Item*, It is ordained by the King by consent and deliverance of the three Estates, that all and singular the Kings Lieges of the Realm live and be governed under the Kings Laws and Statutes of the Realm al-  
lanerly: and under na particular Laws, nor special priviledge, nor be na Laws of uther Countries nor Realms.

*Item*,

*Item*, It is Statute and ordained, That all our Sovereign Lordis Lieges beand under his obeifance, and in special the Illes be ruled by our Sovereign Lordis awn Laws, and the Common Laws of the Realm, and be nane uther Laws.

Parl. Jac 4. c. 79.  
11 Martii Anno  
Dom. 1503.

King James at his Parliament holden An. 1. of his reign, endeavoured to have made an union of both Kingdoms, and to have erected a new Kingdom of Great Britain. And thereupon authority was given to certain Commissioners of the higher and lower House of Parliament, to treat with certain Commissioners of Scotland for and concerning an union of both Kingdoms. Amongst these Commissioners there grew a question, whether there could be made an union of the Kingdoms by raising a new Kingdom of Great Britain, before there was an union of the Laws. Which question by the Kings commandment was referred to all the Judges of England in Trinity Term, An. 2 Jac. who unanimously resolved (I being then Attorney general, and present) That Anglia had Laws, and Scotia had Laws, but this new created Kingdom of Britannia should have no Law. And therefore where all the judicial proceedings in England are secundum legem & consuetudinem Angliæ, it could not be altered secundum legem & consuetudinem Britannicæ, until there was an union of the Laws of both Kingdoms, which could not be done but by \* Authority of Parliament in either Kingdom.

1 Jac. cap. 2.

An. 3 Jac. cap. 3. An Act made for things to be done by force of the said Act of 1 Jac. cap. 2. in any other Session of Parliament.

Anno 4 Jac. cap. 1. A repeal of hostile Laws and of hostility between England and Scotland, &c. And it is enacted, that no Englishmen shall be sent out of England into Scotland for any offence done in Scotland, until such time as both Realms shall be made one in Laws and government. So as the resolution of the Judges was approved by Parliament. See a Proclamation 20 Octob. 2. Jac. concerning the Kings stile of King of Great Britain, wherein all judicial and legal proceedings, &c. are excepted.

Vid. supra. p. 36.  
\* Ex instrumento  
Lib. Hosp. Sancti  
Leonardi in Com.  
Eborum. Egbert  
Rex in Parlamen-  
to apud Winton-  
iam muravit no-  
men Regni de  
consensu populi  
sui, & iussit illud  
de cætero vecari  
Angliam. Hic Rex  
Egbertus obiit  
Anno Dom. 673.  
See a Proclamati-  
on 15 Septemb.  
1603. 2 Jac.

I never read of any union of divided Kingdoms, and therefore I conceive it to be without precedent. And in this union many things would fall into consideration, and those of great weight, other then the union of Laws, though that be a main one: As for example, the several Crowns are descendible to several heirs of \* blood. And question may be made who should be heir of this new Kingdom.

\* H. 7.

But the learned Poet hath found out an union without danger, directing his verses to King James.

Cum triplici fulvum conjunge Leone Leonem,  
Ut varias Atavus junxerat ante Rosas.  
Majus opus, varios sine cæde unire Leones,  
Sanguine quam varias confociaſſe Rosas.

Whosoever is desirous to know such Miscellanea as we have observed concerning Scotland, let him read these Records and Authorities following.

The Records of Parliament from the beginning thereof, for the receivers and triers of Petitions in the Lords house, Rot. liberat. anno 3 Ed. 1. m. 2. per Johannem Lovetot, Rot. paten. anno 20 Edw. 1. Gilberto Comiti Gloverniæ & Hereford. Scotia. Rot. Parliament. 21 Edw. 1. inter placita. Rot. 1 & 2 Hovenden 1194. pag. 7. carta Regis R. 1. Mat. Westm. Anno Dom. 1260. pag. 302. H. 3. Rot. Scotiæ 21 E. 1. Carta F. 1. & Iſa Alexandri Regis Scotiæ. Rot. Vasconia 25 E. 1. m. 2. 3. in dorf. Trin. 25 E. 1. coram Rege Rot. 6. North. Rafe de Tonyes caſt. An. 29 E. 1. Iſa quas Rex per ſe & quas Comites & Barones Angliæ per ſe miſerunt Domino Papæ anno 29 E. 1. autoritate Parliamenti, quæ irrotulata ſunt etiam in Scaccario. Vid. Wallingham 48 & 49.

Rot. pat. 24 E. 1. Episcopis Scotiæ. Mich. 33 E. 1. coram Rege Rot. 127. Sco-

Rot. Parl. apud  
Linc. 29 E. 1.  
Anno Dom. 1300.  
Littere omnium  
Nobilium Angliæ,  
&c. Papæ.

tia,



tia, Rot. Parl. 35 E.1. in brevi de Parlamento, & auter 1 E.2. 1 E.3. f.17. Grayes case. 6 E.3.18. The Abbot of Crowlands case. 9 E.3.6. John Darcy's case. Rot. pat. 10 E.3. 2. ps. Comes Arundel. Rot. Parl. 14 E.3. nu.15. stat. 4. Rot. Claus. 22 E.3. & 23 E.3. breve de Parlamento magnifico Principi, &c. 22 Aff. p. 85. 39 E.3. fol. 35. Rot. Parliament. 42 E.3. nu. 7. 42 E.3. fol. 25. 8 R.2. tit. Cont. clayme. pl. ultimo. 13 H. 4. fol.5. Rot. pat. 2 H.5. part. 3. m. 1. 8 H. 5. fol. 5. 32 H.6.25. 20 E.4.6. b. Litt. sect. 100. & 165 1 part of the Institutes. Stat. de 2 & 3 E.6. cap.36. Fortescue cap. 13. Pl. com. 126. Dier manuscript 3 Eliz. 22. b. & 13 Eliz. fol. 68. m. 5. Dier 12 Eliz. fol. 287. in print. Lib. 7. fol. 22,23. &c. Calvins case. Lib. 9. fol. 114. Seignior Zanchers case. See before in the Chapter of the High Court of Parliament.

Historia.

Polydor. Virgil. Hollinsh. 1 part. fol. 116,117. 2 part.286. Stowe 303. Matth. Westm. 428,425. 443,444,445. Walsingham 17.28.32.129,&c.

Thus have you all which we have observed in our reading concerning this matter, and which the benevolent Reader may peruse at his pleasure; to whose censure we wholly refer the same. Multi multa, nemo omnia novit.

You have observed, that those of Scotland do agree with us in language, and as hath been said, differ in Laws. On the other side, the Subjects of Ireland differ from us in Language, and agree with us in Laws, and therefore of them we shall speak somewhat the more at large.

Bede in History of England, lib. 1. c. 1.

\* Redshanks.

Amongst variety of Authors from whence this noble Nation of the Scots originally came, we follow Venerable Bede in his History of England, l. 1. c. 1. and also from whence the \* Picts originally came. And there you shall read, that the Picts arriving in Britania planted themselves in the north parts thereof, for the Britains had taken up the South part before. And whereas the Picts having no wives did require the Scots to marry their daughters, the Scots agreed to grant them their boon, under condition, that as often as the matter was in doubt, they should choose their King rather of the next of the house of the woman than of the man.

Cap 13.

And that Palladius in the eighth year of Honorius the Emperour, Anno Domini 411. was sent by Celestinus Bishop of Rome to the Scots that had received the faith of Christ, to be their first Bishop.

\* Et lib. 2. cap. 4.

Beda in his History of England, l. 1. cap. 11. Vld. supr. p. 157.

\* That the Scots do nothing differ from the Britains in their conversation. Both these famous Kingdoms have found by woful experience, that unwise and incertain making of leagues, greatly indamageth the Commonwealth, and the fatal danger of such leagues to the Princes themselves.

## CAP. LXXVI.

## Of the Kingdom of Ireland.

**W**E shall not need to undertake another work to write of the Courts of Justice there, for that they have the same which we have in England, and the same Law, saving, where some that have written of them have in some main points mistaken the matter; we will convince the same by direct matter of Record, and we intend to add some things which are necessary to be known, which no man that hath written of that Country hath vouched, or if they have remembred the same, it is with so light a touch, as much is omitted out of the Record, or case resolved it self, worthy to be known, which we intend to supply for the honour of the King, and benefit of his subjects there. And the rather, for that I have been informed by many of them that have had judicial places there, and partly of mine own knowledge, that there is no Nation in the Christian world that are greater lovers of Justice (whereof we shall principally treat) then they are, which virtue must of necessity be accompanied with many others; and besides they are descended of the ancient Britains, and therefore the more endeared unto us.

First, concerning the Parliament of Ireland, being the highest Court there, where some have supposed that the same began in 17 E. 3. we shall make it appear by matter of Record, that then not only King John, as all men agree, but H. 2. also the Father of King John, as \* before it hath appeared, and in the next page shall be touched, did ordain and command at the instance of the Irish, that such Laws as he had in England should be of force and observed in Ireland: hereby Ireland being of it self a distinct Dominion, and no part of the Kingdom of England (as it directly appeareth by many Authorities in Calvins case) was to have Parliaments holden there as England; and thereupon in the Reign of King John himself a Parliament was holden there, as by this Record ensuing appeareth.

*Rex Comitibus, Baronibus, Militibus, & liberis hominibus, & omnibus aliis de terra Hiberniæ, Salutem. Quia manifeste esse dignoscitur contra Coronam, & dignitatem nostram, & consuetudines, & leges regni nostri Angliæ, quas bonæ memoriæ Dominus Johannes Rex, pater noster, de a communi omnium de Hibernia consensu teneri statuit in terra illa, quod placita non teneantur in Curia Christianitatis de Advocationibus Ecclesiarum & Capellarum, vel de laico feodo, vel de catallis quæ non sunt de testamento vel matrimonio. Vobis mandamus, prohibentes quatenus hujusmodi placita in Curia Christianitatis nullatenus sequi præsumatis in manifestum dignitatis & Coronæ nostræ præjudicium, scituri pro certo, quod si feceritis, dedimus in mandato Justiciario nostro Hiberniæ, Statuta Curie nostræ in Angliæ contra transgressiones hujus mandati nostri cum justitia procedat, & quod nostrum est exequatur. In cujus, &c. Teste Rege apud Winchcomb 28 die Octobris, Anno Regni nostri decimo octavo. Et mandatum est Justiciario Hiberniæ per literas clausas, quod prædictæ literas patentes publice legi & teneri faciat.*

But as true it is that the Father of King John, viz. H. 2. when he had conquered Ireland, sent that Treatise, intituled *Modus tenendi Parliamentum*, in a fair Parchment Roll, for their better holding of Parliaments there, which you may read more at large before Cap. The High Court of Parliament, p. 12.

1 Jacobi cap. 1. &  
11 Jac. & c. cap. 1.  
& 6. in Ireland.  
Vid. the 1 part of  
the Institutes,  
Sect. 212.

Parliaments in  
Ireland of ancient  
time.

\* Pag. 12.

Rot. Ann. 18 H. 3.  
m. 17. nu. 21.  
See the first part  
of the Institutes  
Sect. 212.  
a Nota, Rex de  
communi omnium  
consensu (ac com-  
muni consilio ten-  
neri statuit) is by  
Act of Parliament.  
b Nota [omnium]  
that all received  
the Laws, &c.  
Many things in  
these Letters Pa-  
tents are worthy  
of observation.



Rex Henricus 3. Anno regni sui 12. mandavit Justiciario suo Hibernie, ut convocatis Archiepiscopis, Episcopis, Baronibus & Militibus ibidem coram eis legi faciat Cartam Regis Johannis; quam legi fecit, & jurari a Magnatibus Hibernie de legibus & consuetudinibus Anglie observandis, & quod leges illas teneant & observent.

Rot. Pat. 30 H. 3.

\* Nota.

Coram Rege  
Mich. 33 E. 1.  
Rot. 124. Hi-  
bernia.

Quia pro communi utilitate terre Hibernie, & pro unitate terrarum, provisum est, quod omnes leges & consuetudines quæ in regno Anglie tenentur in Hibernia teneantur, & eadem terra eisdem legibus subjaceat, ac per easdem regatur, sicut Johannes Rex cum illic esset \* statuit, & firmiter mandavit. Ideo volumus quod omnia Brevia de Communi Jure quæ currunt in Anglia similiter currant in Hibernia sub novo Sigillo Regis. Teste, &c. apud Woodstock.

Major Dublin, qui querebatur vers. Thesaurarium Scaccarii Dublin, & vers. Barones Scaccarii de gravaminibus per ipsos illatis, remittitur Parlamento, & inde huc: cui per Curiam dictum est, quod gravamina sua proponat, qui dicit quod non adhuc est consultus, super quo dies datus est. Ad quem diem nullas proposuit querelas, Ideo committitur Turri London, & finem fecit Domino Regi.

Sometimes the King of England called his Nobles of Ireland to come to his Parliament of England, &c. And by special words the Parliament of England may bind the Subjects of Ireland, as taking one example for many.

Rot. Parl. 8 E. 2.  
m. 31.

10 Octobris Rex affectans pacificum statum terre Hibernie, mandavit Ricardo de Burgo Com' Ulton' & aliis Nobilibus terre predictæ, quod sint ad Parliamentum suum quod summoneri fecit apud Westm' in Octabis Sancti Hillarii prox' ad tractand' ibid' cum Proceribus, &c. regni sui super statu terre predictæ.

An excellent president to be followed, whensoever any Act of Parliament shall be made in England, concerning the Statute of Ireland, &c.

Rot. Parl. 35 E. 3.  
irrot. sic.

Anno 35 E. 3. De Consilio summonit' pro ter' habentibus in Hibernia,

Maria Comitissa Norf.  
Ælianora Comitissa Ormond.  
Jana la despencer,  
Philippa Com. de la Marche,  
Johanna Fitzwater,  
Agnes Comitissa Penbroke,  
Margareta de Roos,  
Matildis Comitissa Oxoniae,  
Catherina Comitissa Athol.

admittendum fide dignos ad colloquium.

a Rot. Parl. anno  
10 E. 2.

Rot. claus. 10 E. 2.  
m. 38. & Rot.  
claus. 12 E. 2. m. 3.

Annales Hibernie  
Anno Dom. 1309.

2 E. 2. Parliam. tent.  
apud Kilkennie per

Com. Ulton. & Jo-  
hannem Wagan.

Just. c. Hibernie &  
Magnates, &c.

b Rot. Par. 17 E. 2.  
1 part. Pat. anno

predict. m. 3.

c Int. Ordinationes  
pro statu Hibernie

anno 17 E. 3. in  
Turri, &c.

a De Parliamentis singulis annis in Hibernia tenendis, & de legibus & consuetudinibus ibidem emendandis.

Whereby it appeareth that there were Parliaments holden in Ireland befoze this time, and order taken at this Parliament that they should be holden every year, and the like Acts were made in England in 4 E. 3. & 36 E. 3. for Parliaments to be holden in England.

b In Octabis Sancti Martini apud Nottingham Rex de consensu communis Consilii sui fecit certas ordinationes pro reformatione status sui Hibernie, & ministrorum Regis ibidem.

c Volumus & præcipimus quod nostra & terre nostre negotia, præsertim majora & ardua, per peritos Consiliarios, ac Prælatos, & Magnates, & quosdam de discretioribus hominibus in Parliamentis tractentur, discuti-  
antur & terminentur.

This

This Ordinance doth regulate the Parliaments in Ireland according to the institution and end of the Parliaments in England, as in the Writ of Parliament, which is to confer and treat De arduis & urgentibus negotiis nos (i. Regem) & statum & defensionem regni & Ecclesiæ Anglicanæ concernentibus; the effect whereof is contained in the Ordinance of 17 E. 3. but that Ordinance doth not erect any Parliament there, as some have (without any colour) supposed.

See 20 H. 6. fo. 8. which began Mic. 18 H. 6. Rot. 46. coram Rege, & 2 R. 3. fo. 12. See before in the Chapter of the High Court of Parliament.

And seeing good and profitable Acts of Parliament made in the Realm of England since the Reign of King John extended not into Ireland, unless it were specially named or by general words included, \* as within any of the Kings Dominions, a right profitable Act was made at a Parliament holden in Ireland in Anno 10 H. 7. before Sir Edward Poynings then Deputy or Prorex in Ireland, and thereupon called Poynings Law.

Vid. Lib. Album in Scaccario. Divers Acts here made concerning Ireland, and transmitted thither to be inrolled in the Chancery there. \* 25 H. 8. cap. 12. F. N. B. 178. a. 12 R. 3. 12. Anno 10 H. 7. Poynings Law.

Whereby it is enacted, that \* all Statutes late made within the Realm of *England* concerning or belonging to the common or publick weale of the same, from henceforth be deemed good and effectual in the Law, and over that be accepted, used and executed within this Land of *Ireland*, in all points at all times requisite according to the tenor and effect of the same. And over that by the authority aforesaid, that they and every of them be authorized, proved, and confirmed in this same Realm of *Ireland*. And if any Statute or Statutes have been made within the said Land heretofore to the contrary, that they and every of them by the authority aforesaid be adnulled, revoked, and made void, and of none effect in the Law.

\* Nota.

And Hil. 10 Jacobi Regis, it was resolved by the two Chief Justices and Chief Baron, that this word [late] in the beginning of this Act had the sense of [before] so that this Act extended to Magna Carta, and to all Acts of Parliament made in England before this Act of 10 H. 7. But it is to be observed that such Acts of Parliament as have been made in England since 10 H. 7. wherein Ireland is not particularly named or generally included, extend not thereunto, for that albeit it be governed by the same Law, yet is it a distinct Realm or Kingdom, and (as hath been said) hath Parliaments there.

Vide Bracton lib. 5. fo. 395. b. Temps E. 1. Voucher 239. 14 H. 3. Stat. de Homage. 13 E. 2. Bataardy 25. 7 E. 3. 9. 8 Aff. 17. Britton fo. 1. a. 45 E. 3. 19. Trin. 29 E. 1. coram Rege. 10 E. 3. 41, 42. 11 H. 4. 7. 8 R. 2. Proce. 224. 3 H. 7. 10. 7 E. 4. 27. Pl. Com. 368. 13 Eliz. Dier 303. 20 Eliz. Dier 360. Lib 7. Calvins case. 1 part of the Institutes Sect. 95.

Books concerning Ireland.

*How and in what manner a Parliament is to be holden in Ireland, and how Bills ought to pass in the same.*

The Lords of the Council directed their Letters to the two Chief Justices and Chief Baron in these words.

Parliaments in Ireland holden at this day. Hil. 10 Jacobi Regis.

After our hearty commendations to your Lordships. Whereas his Majesty for divers weighty considerations hath resolved to hold a Parliament in the Realm of *Ireland*, and that by an Act made in the tenth year of H. 7. called *Poynings Act*, it is provided that all such Bills as shall be offered to the Parliament there shall be first transmitted hither under the Great Seal of that Kingdom; and having received allowance and approbation here, shall be put under the Great Seal of this Kingdom, and so returned thither to be preferred to the Parliament: forasmuch as there are accordingly transmitted hither from thence di-



vers Bills as well publick as private, some of which Bills were first agreed on here, some others were framed and conceived there, and coming now hither may happily receive amendment or alteration: we have thought meet for avoidance of any question or inconvenience that may arise of the manner and form of proceeding in amending or altering of these Bills, hereby to pray and require you, calling to you his Majesties Attorney and Solicitor to look into *Poynings Act*, and to consider of some such course as shall be fit to be held concerning the same, &c.

Dated *Ultimo Januarii* 1612.

3 & 4 Ph. & Mar.  
cap.4.

Whereupon in this Term the said Chief Justices and Chief Baron, and the Attorney and Solicitor were assembled two several days at Serjeants Inn, and had consideration not only of the said Act of 10 H.7. cap.4. but of the Act of 3 & 4 Ph. & Mar. cap. 4. Intituled, An Act declaring how *Poynings Act* shall be expounded and taken.

For by the said Act of 10 H. 7. it is provided that no Parliament be hereafter holden in the said Land of *Ireland*, but at such season as the Kings Lieutenant and Council there first do certifie the King under the Great Seal of that Land, the causes and considerations, and all such Acts as them seemeth should pass in the same Parliament, and such causes, considerations, and Acts affirmed by the King and his Council to be good and expedient for that Land, and his License thereupon, as well in affirmation of the said Causes and Acts, as to summon the said Parliament under his Great Seal of *England* had and obtained. That done, a Parliament to be had and holden after the form and effect afore rehearsed. And if any Parliament be holden in that Land contrary to the form and provision aforesaid, it be deemed void, and of none effect in Law.

*sur quel Act divers doubts & ambiguities fuer' conceive & ascuns de eux fuer' de greinder difficulty que auters.*

1. Et primerment un doubt fuit conceive le quel le dit Act de 10 H. 7. extend al successors le Roy H.7. intant quel' Act parle solement del Roy generalment & ne' de ses successors. 2 Si le Roigne Marie fuit deins cest parol Roy. Et coment que ceux ne fuer' matters dascun ambiguity, car cest parol Roy que import son politique capacity ne unques mort, & esteant parle indefinite extend in ley a tous les successors, uncore ceo est issint expound per le dit Act de 3 & 4 Ph. & Mar. Et que le dit Act de 10 H. 7. extendra to the King and Queens Majesty, her Heirs and Successors.

2. Ou le Act de *Poynings* dit ( the Kings Lieutenant and Council there) scruple fuit conceive, si le Roy appoint un per nosme le Deputie, ou Lord Justice, ou sil constitute 2 Lords Justices, chief Governours or Governour, & le Council, &c. Et quant a ceux est explaine per le Act de 3 & 4 Ph. & Mar. que le dit Act de *Poynings* extendra tout ceux.

3. Le greinder & plus difficult doubt fuit sur ceux parols in laet de *Poynings*. And such causes, considerations, and Acts affirmed by the King and his Council to be good and expedient for that Land, &c. Le quel le Roy poet fair ascun change ou alteration des causes, considerations ou Acts que ferr' transmitt' icy del Lieutenant & Council d' *Ireland*, car ceo nest pas affirmation mes correction & alteration de eux. Et pur ceo fuit necessary de stre explaine, que Laet de 3 & 4 Ph. & Mar. fait in ceux parols. Ei-

ther

ther for the passing of the said Act, &c. in such form and tenor as they should be sent into *England*, or else for the change and alteration of them, or any part of the same.

4. *Auter question fuit sur les parols del primer Act, sc. That done a Parliament to be had and holden, &c. si a mesme le Parliament auters Acts que fier' affirme ou alter icy poent estre enaëles per authority del Parliament la. Le quel est explique per le dit darrein Act in ceux parols, for passing and agreeing upon such Acts, and no others, as shall be so returned under the Great Seal of England.*

5. *Grand doubt fuit conceive sur les ditz parols ( that done a Parliament to be holden ) le quel le Lieutenant & Councell d' Ireland apres le Parliament commence la, & pendente Parlamento poient sur debate & conference la, transmit ascun auters considerations, causes, tenors, provisions, & ordinances come semblent a eux bone destre enaët' a mesme le Parliament deins le Realme d' Ireland, le quel est explique per le dit Act de 3 & 4 Ph. & Mar. in expresse parols, que ils poient, &c.*

*Nota Lecteur lorder del proceeding & sommons del Parliament in Ireland. Primerment le Lieutenant & Councel la doivent certefier desouth le Grand Seale d' Ireland le causes & considerations de toutz tielz Acts come semble a eux bone a passer en Parliament, issint que le original covient a commencer la. 2 Ils covient destre affirme ou alter & change & retourne desouth le Grand Seale Dangleterre. 3 License desouth le Grand Seale a summoner & tener un Parliament. 4 Atransmitter Billes pendente Parlamento come appiert devant. Et fuit auxi resolve una voce. 1. Que les causes, considerations, & Billes transmette icy desouth le Grand Seale d' Ireland doivent destre custodie & preserve icy in le Chancery d' Anglitterre, & ne remaunde. 2. Silz soient affirme, ilz doivent destre transcript desouth le Grand Seale & retourne in Ireland, & tout ceo que passe le Grand Seale doiet destre inrolle icy in le Chancerye. 3. Si les Acts transmitt icy soient in ascun part alter ou change icy, lucts issint alter & change doivent come en un continent destre retourne desouth le Grand Seale Dangleterre a ceux in Ireland, tout quel doit destre inrolle icy in le Chancorye Dangleterre. Mes le transcript desouth le Seale d' Ireland que le remaine in le Chancerye icy, ne ser' amend, mes l' amendment serra desouth le Grand Seale Dangleterre come est avandit. 4. Les amendments ou alterations icy ferr' come est avandit retourne in Ireland sans ascun signification ou certificat dallowance de ceux per ceux de Ireland, car sicome les Acts movent originalment de Ireland, issint les amendments ou alterations movent icy in Anglitterre. 5. Touts les Bills que sont transmitt icy de Ireland sont ove le petition del Deputy & Councel le Roy touts ensemble desouth un Grand Seale d' Ireland. 6. Touts les Bills que sont affirme ou alter icy soient retourne ensemble desouth un Grand Seale Dangleterre.*

And thus much concerning the Parliaments of Ireland.



The case of the Earl of Shrewsbury upon the Statute of 28 H. 8.  
of Absentees.

28 Martii Anno  
Dom. 1612.

*Per force de certain Letters Patents de 28 Mar. 1612. del Seigniors del Privy Councel direct al Sir Humf. Winche, Sir Jam. Lea, Sir Anthony Sentleger, & Jam. Fullerton, ilz certifiont aux seigniors le claim de Guilb. Countee de Salop aux dignities del Countee de Waterford & Barony de Dongarvan in Ireland come ensuiſt. Le Roy H. 6. per ses Letters Patents An. 24. de son reign granta a son treschier cosin John Countee de Shrewsbury in consideration de ses approved & foyall services in le City & County de Waterford in Ireland, pro eo quoque quod per eundem consanguineum nostrum prædicta terra nostra Hibernia in partibus illis contra hujusmodi inimicorum & rebellium nostrorum insultus potentius defenderetur, ipsum in Comitem Waterford una cum stilo & titulo ac nomine & honore eidem debitis ordinamus, præficimus & creamus Habendum, al dit Countee, & a les heirs males de son corps. Et oustre per mesme les Letters Patents granta les Castles, seigniories, honors, terres & barony de Dungarvan al dit John Countee & a les heirs males de son corps, les premisses destre tenus del Roy & ses heirs per homage & fealty, & le service destre seneschal a son Majesty in le Realm d' Ireland. Puis al Parliament (communement appelle des Absentees) tenus al Dublyn in Ireland, 1 Maii, An. 28 H. 8. fuit enact (per reason del long absence del George Countee de Salop hors de mesme le Realm) que le Roy, ses heirs & assignes avera & enjoyera in droit de son Corone de Anglitterre tous honors, mannors, Castles, seigniories, franchises, hundreds, liberties, County Palatines, Jurisdicions, annuities, fees des Chivaler, terres, tenements, &c. & tous & singular possessions, hereditaments, & tous auters profits, cibien Spiritual come Temporal, quecunque queux le dit George Countee de Shrewsbury, & Waterford, ou ascun anter person ou persons a son use avoient, &c. Le Roy H. 8. per ses Letters Patents, An. 29 de son reign recitant le dit statute de Absentees. Nos præmissa considerantes & nolentes statum, honorem, & dignitatem prædicti Comitis diminuere, sed amplius augere, ex certa scientia, & mero motu, &c. Granta al dit Countee & ses heirs le Abby de Rufford ove les terres a ceo pertynant in le County de Nottingham, & le seigniorie de Rotheram in le County de York, les Abbeyes de Chesterfield, Shirebroke & Glossopdale in le County de Derby ove divers auters terres & tenements de grand value destre tenus in Capite, & le questions fuer'.*

1. *Le quel per le longe absence del Countee de Salop hors de Ireland per que les Roys & subjects wanted leur defence & assistance la, enconter le expresse consideration del creation, le title del honor est perdue ou forfeit, le dit Countee esteant Pier del ambideux Realms, & residing icy.*

2. *Le quel per le dit statute des Absentees, An. 28 H. 8. le title del dignity del Countee de Waterford soit prise del dit Countee de Shrewsbury cibien come les mannors, terres, tenements & auters hereditaments in mesme Laet specifie.*

*Et puis per auters Letters des seigniors del Councell, 27 Sept. 1612. les deux Chief Justices & Chief Baron fuere require a consider del dit case (que fuit enclose deins leur Letters) & a certifie leur opinions de ceo.*

*Quel case fuit argue per Councell erudite del dit County devant les dit Chief Justices & Chief Baron, sur que ilz presteront advisement (apres que ilz*

ilz ont divers foitz lye le Preamble & tout le dit Act de 28 H. 8.) jefque a Term de St. Mich. Anno decimo Jacobi Regis, & donques fuit unement resolve per eux come ensuift.

Quant al primer fuit resolve, que intant que nappiert que ascun defence fuit requifite, & que le consideration executory nest trove per office de stre infreint, ne judgement done in Scire Fac', a cest cause que le dit Countee de Salop, ceo nient obstant, remain Countee de Waterford.

Quant al 2 fuit resolve, que le dit Act de 28 H. 8. des Absentees nad tolle solement les possessions, que fuer' done a luy al temps de son creation, mes auxi le dignity mesme. Car coment que un poet aver dignity sauns ascuns possessions, uncore ceo serroit pleine de inconvenience, & a cest cause le dit Act de 28 H. 8. (come tous auters Acts doivent estre) serra expound douster tout inconvenience, & pur ceo per les generall parols del Act, (sc. des honors & hereditaments,) le dignity mesme ove les terres dones un maintenance de ceo sont done al Roy, & le dignity extinct in le Corone.

Et est digne de observation le cause de degradation de George Nevill Duke de Bedford, que fuit fait per force dun Act de Parliament, 16 Jan. An. 17 E. 4. quel Act reciting the erection and making the said George Duke, expresse le cause de son degradation in ceux parols.

Rot. Parl. tent.  
apud Westm'  
16 Jan. Anno Re-  
gis 17 E. 4. Degra-  
datio Geor. Ducis  
Bedford.

And for so much as it is openly known, that the said George hath not, nor by inheritance may have any livelihood to support the said name, estate, and dignity, or any name of Estate, as oftentimes it is seen, that when any Lord is called to high estate, and have not livelihood convenient to support the same dignity, it induceth great poverty and indigence, and causeth oftentimes great Extortion, Imbracery, and Maintenance to be had, to the great trouble of all such Countries where such Estate shall happen to be inhabited. Wherefore the King by the advice of his Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, ordaineth, establisheth and enacteth, that from henceforth the same erection and making of the same Duke, and all the names of dignity to the said George or to John Nevil his father be from henceforth void and of none effect, &c.

In quel Act 3 choses fuer' observe, 1. Que coment le dit Duke navoiet ascun possessions a supporter son dignity, uncore son dignity ne poet estre tolle de luy sans Act de Parliament. 2. Les inconveniences appiert ou grand estate ou dignity nest pas accompany ove livelihood. 3. Ceo est bone cause a toller le dignity per Parliament, Et pur ceo le dit Act de 28 H. 8. serra expound selonque le generalty del letter a toller tiel inconvenience. Et coment que le dit Countee de Salop soit non solement de grand honor & vertue, mes auxi des grand possessions in Engleterre, uncore ne fuit lentention del Act a continuer luy Countee in Ireland quant ses possessions in Ireland fuer' tolle de luy, mes que le Roy a son pleasure puit conferre cibien le dignity, come les possessions a ascun auter pur le defence de mesme le Realm. Et les dits Letters Patents de An. 29 H. 8. nad parols a restorer le dignity que Lact de Parliament ad tolle, auxi ne fuit lentent del Roy diminuere statum, honorem & dignitatem ipsius Comitis, sed augere, ceux sont destre entendes des possessions pur maintenance de son dignity, car tant appiert per cest parol [augere] car il increase per mesme les Letters Patents ove exceeding grand bounty le revenues del dit Countee de Salop en Angleterre, quel le Roy pense fuit un increase de son state, honor & dignity, issint son dignity in Angleterre fuit increase ove large possessions in Angleterre in lieu de tout ceo que fuit tolle de luy per Lact de 28 H. 8. Et ou fuit object que les general parols des  
honors



*nors & hereditaments ] sont explain & qualifie per les dits relative subsequent (queux le dit George Countee de Salop ou ascun auter a son oeps,) & pur c' ne serra entende d'ascun honor ou hereditam't mes dont auters poient estoier seise al use, & ceo nulpoet del dit dignity, & pur ceo le dit Act extendere a ceo. Mes ceo est destre prise reddendo singula singulis, & les parols queux le dit George Countee avoit sont sufficient a passer le dignity, & ove ceo accord le opinion de tous les Justices Dengleterre in Nevils case, sur autiel parols in le Statute 26 H.8. in le 7 part de mes Reports, f. 33 & 37.*

Rot. Par. 3 R. 2.  
nu 42.

There is an Act made in 3 H. 2. worthy here of remembrance, which never was yet printed. It is enacted, that all manner of persons whatsoever, who have any lands or tenements, offices or other living Ecclesiastical or Temporal within Ireland, shall reside or dwell upon the same. And that all such as have there any Castles or other Forts, shall fortifie the same and furnish it with men able for defence, and thereupon also dwell. And if they at any time depart, then during their absence to appoint some able to supply his room, otherwise the Governor to dispose the half of their Living to such defence. See the Act at large, necessary to be put in execution in these days.

Rot. Par. 21 E. 1.  
Rot. 3. Hibernia.

Dominus Rex vult & præcipit quod de cætero singulis annis semel in anno computus Hiberniæ, &c. per Thesaur̄ Hiberniæ reddatur ad Scaccarium Angliæ, & ibidem audiatur per Thesaur̄ & Barones suos. A necessary Law, and much for the benefit of the King to be observed.

Trin. 13 E. 1. Co-  
ram Rege Rot. 38.  
in breve de erro-  
re, Hibernia.  
Apud Westm'.  
22 E. 1. Rot. 5. in  
breve de errore  
Int' William de  
Vesey & P. filium  
Thomæ, & Rot.  
Parl. 23 E. 1.

A long Record touching the custody of the body and lands of heirs within age, wherein these words are contained. Et cum una & eadem lex esse debeat tam in regno Angliæ quam Hiberniæ. Like writs of Error of judgments given in the Kings Bench in Ireland, Mich. 32 E. 1. Coram rege. Theobald Verdons case, Breve de errore super bñe de errore Rot. 76. Pasch. 30 E. 1. Coram Rege Rot. 50. in breve de errore, &c. William de la Rivers case, Et Trin. 33 E. 1. Rot. 56. a Concordatum est per omnes de Concilio Regis, Episcopis & aliis in Hibernia unanimiter, quod consuetudo usitata in Hibernia de bonis testatorum talis est, quod ubi, &c.

5 E. 2 error 89.  
15 E. 3. ibid. 72.  
34 Ass. p. 7. Reg.  
F. N. B. fol. 24. c.  
11 H. 8. Kelw. 202.  
15 E. 3 Record 38.  
a Pasch. 28 E. 1.  
Coram Rege Rot.  
98. Hibernia.  
b Tr. 33 E. 1. Co-  
ram Rege Rot.  
124. Hibernia.  
c Tr. 18 E. 3. Co-  
ram Rege Rot.  
148. Hibernia.  
Sir Elias Ashburn-  
hams case.  
d Pasch. 24 E. 3.  
Rot. 25. Coram  
Rege Cornubia.  
e Brañ. l. 5. f. 195.  
7 E. 3. 9. 12 E. 3.  
41, 42.

b Prifage vinorum in Hibernia, and the manner of the taking of the same.

At a Synod holden in Ireland by St. Patrick their Apostle, it was unanimously agreed that Irish Priests should have wives.

c Tres Petitiones porrectæ Regi contra Eliam de Ashburnham militem Justiciar' Domini Regis in Hibernia de diversis malefactis, &c. per ipsum perpetratis, qui dicit quod non debet tractari, nisi in Hibernia, & ibidem terminari: & quod oportet ipsum Dominum Regem informari per indictamentum 12 Jur' vel per Appellum formatum & Attachiamen' ad sectam partis secundum legem & consuetudinem Regni Regis Angliæ hætenus usitat'. Curia vult inde advisari, & interim manucapitur. Postea Dominus Rex mandavit breve quod caperent manucapt' ad respondend' in Hibernia.

d Admittitur Episcopus Exon' pro fine 200 Marc' pro contemptu in non admittendo præsentatum Regis ad Ecclesiam de Southwell, pro quo contemptu omnia Temporalia seiscita fuerunt in manus Regis, & tunc temporis ante finem fact' vacavit Archidiaconat' Cornubiæ ratione quod incumbens electus fuit in e Archiepiscopum Dublin in Hibernia (temporalibus Episcopi Exon' ad tunc in manibus Regis existen') per quod Dominus Rex recuperavit vers. Episcopum dict' Archidiaconat'.

In this Record two conclusions are to be observed. 1. Though Ireland (as hath been said) be a distinct Kingdom of it self, yet it is governed by one and the same Law that England is. 2. That when the Archdeacon was by the King preferred to a Bishoprick, he had the presentation to the Archdeaconry in respect



respect of the Temporalities of the Bishop of Exeter Patron of the Archdeaconry, and not by any *a* prerogative. And so it is, if an Incumbent in Ireland be made a Bishop in England.

If a Bishop in England be made a *b* Cardinal, the Bishoprick becomes void, and the King shall name the successor, because the Bishoprick is of his Patronage.

*c* See 45 E. 3. 9. upon the repeal of a Ratification of the Incumbent, a Proceeding out of the Chancery here to the Justices in Ireland to proceed in the Quare Impedit brought by the King.

I find an ancient Record touching Ireland necessary to be explained, in these words.

*d* Rex Thesaurario Hiberniæ, Salutem. Cum Edwardus primogenitus noster terram Hiberniæ habeat & teneat de dono nostro cum omnibus pertinentiis suis adeo libere & quiete sicut eam in manu nostra teneremus, per quod charissima filia nostra Alianora consors dicti filii nostri Aurum suum tam de finibus quam sponte oblati in terra Hiberniæ habere debet, sicut charissima consors nostra Alianora Regina Angliæ Aurum suum habet de eisdem in regno nostro Angliæ: Vobis mandamus, &c. quatenus prefata consorti filii nostri predicti Aurum predictum de finibus & sponte oblati, & etiam de quibuscunque aliis finibus predictis habere facias in forma predicta. Et hoc, &c. In cuius, &c. Teste Rege 29 die Februarii, Anno 52 H 3.

By this Record first it appeareth, that, as the Law was taken at that day by gift of King H. 3. his eldest Son Prince Edward was Lord of the Dominion and Lordship of Ireland. Secondly, that albeit the wife of Prince Edward was not Queen in name, but had the effect of it, therefore she should have a duty called Aurum Regiæ, as well as the Queen of England, being but Lady in Ireland. *e* For albeit the Kings of Ireland were (until the Statute of 33 H. 8.) styled by the name of Lord of Ireland, yet was he supremus, and absolute Dominus, and had royal dominion and authority, and that his Consort was in rei veritate Regina, or else she could not have had Aurum Regiæ.

Albeit this Royal Dominion and Land of Ireland was of ancient time permitted to be granted de facto to the Kings Sons before mentioned, yet by the Law the King by his Letters Patents could not grant so Royal a member of his Imperial title to any, no more then he could do of the Kingdom of England. And that doth well appear by this, that when King R. 2. by his Letters Patents created Robert de Vere Earl of Lincoln, and Marquess of Dublin to be Duke of Ireland, he granted to him for life \* totam terram & Dominium Hiberniæ, & Insulas eidem terræ adjacentes, ac omnia Castra, Comitatus, Burgos, Villas, \* Portus Maris, &c. una cum homagiis, \* obedientiis, vassalis, serviciis, & recognitionibus Prælatorum, Comitum, Baronum, &c. \* advocacionibus & patronatibus Ecclesiarum Metropoliticarum & Cathedralium Abbatiarum, &c. \* constituere Cancellar, Thesaurar, Justiciar, &c. cum regaliis, regalitatibus, libertatibus, &c. & omnibus aliis \* quæ ad regaliam nostram pertinent, \* cum mero & mixto Imperio, adeo plene, integre, & perfecte, sicut nos ea tenuimus & habuimus, tenuerunt & habuerunt progenitorum nostrorum aliqui ullis unquam temporibus retroactis. Tenendum per \* Homagium ligeum tantum.

*g* The said Letters Patents were authorized by Parliament, Assensu Prælatorum, Ducum, & aliorum Procerum, & Communitatis nostræ Angliæ in Parlamento, &c. albeit it was contra legem & consuetudinem Parliamenti, as before it appeareth, pa. 13, 14. to assent to any thing to the disherison of the King and his Crown. Sed novus iste insolitus & umbratilis honor cito evanuit.

Rot. Par. 13 R. 2. nu. 21. the King by authority of Parliament gave the title of Duke of Aquitaine to his Uncle John of Gaunt, Duke of Lancaster, and it was

*a* This is apparent by many authorities. Trin. 32 E. 1. coram Rege, Rot. 75. John de Bonhams case. 17 E. 3. fo. 40. 21 E. 3. 40. 41 E. 3. 5. 46 E. 3. 32. 6 El. Dier 228. b. pl. 48. resolve. *b* Rot. Pat. 18 H. 6. part 2. m. 24. A Bishop made a Cardinal.

*c* 45 E. 3. fol. 9. *d* Rot. Pat. Anno 52 H. 3. m. 26. Aurum Regiæ.

The like grant was made of the Land of Ireland by H. 2. to his Son John.

*e* 33 H. 8. cap. 1. And so it appeareth by this Act that the King and his Progenitors had before this Act Kingly Jurisdiction and Royal Authority.

*f* See before pag. 13, 14. the grant of King John to the Pope declared to be void by the Parliament in 40 E. 3.

These thus (\*) marked cannot be granted by Letters Patents.

\* Per Hom. ligeum for tenant for life could not do other homage.

*g* Rot. Pat. 9 R. 2. m. 2 & Rot. Par. 9 R. 2. nu 9 & 10. m. 3.



by consent of Parliament, and could not be granted by Letters Patents, because it was one of the titles and stiles of his Royal Crown. And this also did first begin and end in him.

*Aurum Regina.*

But now it is necessary to be known what this duty of *Aurum Regina* is. Wherein three things are to be considered. First, what authority and warrant in Law there is for this duty. Secondly, what it is. Thirdly, what is due thereby. First, in Lib. Rub. in Scaccario fo. 46. de *Auro Regina*, where it is said, that it is to be taken de hiis qui sponte se obligant Regi, &c. This present Record of 52 H. 3. Vet. Mag. Carta 2. part fo. 65. Vid. 10 H. 3. Stat. de Roteland to the same effect.

Hil. 4 E. 1. in  
Scac. ex parte  
Rem. Reg. Hil. 12  
E. 3. ibid. Rot. 3.

Rot. claus. 12 E. 3.  
part 1. m. 21.

A Record in the Exchequer Termino Hil. Anno 4 E. 1. Another there, Hil. 12 E. 3. Rot. 3. ex parte Rem. Regis, and divers other Records in the Reigns of R. 2. H. 4. &c. until the Reign of H. 7.

In Acts of Parliament, viz. 15 E. 3. cap. 6. 31 E. 3. cap. 13.

2. In divers of these Records it appeareth that the Queen should have de sponte oblati \* pro centum marcis argenti unam marcā auri solvend per ipsum qui sponte se obligat. And Pasch. 4. Jacobi Regis the King did require the two Chief Justices and Chief Baron to certify him what belonged to the Queen for this duty at this day. And after many conferences, and hearing of Council learned on both sides, and view of Records, at last it was resolved by them all, and so did Popham Chief Justice report to the King, that the duty belonged to the Queen with these four limitations. 1. It must be sponte from the subject, and at his pleasure whether he will give it or no, and no right in the Crown. And therefore fines for offences, for alienations, or the like, are no part of this duty. 2. It must be freely, without any consideration of any grant, sale, or lease of any thing wherein the King hath any revenue, estate, or interest. And therefore Sales, Leases, Grants of Lands, Tenements, Wardships, or the like, are out of the same, for there is quid pro quo. 3. It must be sponte super aliqua consideratione, &c. For example, if the subject sponte offer to the King for a licence in Poymain, or to create a Tenure of himself, or to have a Fair, Market, or to make a Park, or the like, where the King diminisheth no part of his revenue, state or interest, there *Aurum Regina* is due to the Queen. 4. Of Subsidies, Fifteens, or any other gratuity of the meer grace or benevolence of the subject, there is nothing due to the Queen, and so it was resolved, Hil. 4 E. 1. &c. ubi supra. And so much upon this occasion de *Auro Regina*.

Rot. Parl. 7 R. 2.  
nu 61.

*Certain Irish words  
necessary to be ex-  
plained.*

*a* Thane apud Bri-  
tannos pro viro  
nobili, aut Regis  
ministro.

*b* Brehons Bellagi-  
nes.

*c* Parliament 40

E. 3. at Kilkenny.

*d* Cuttings.

*e* Cosherie.

*a* A Tainist was successor apparent under the chief Lord or Captain of every several Country, and was eligible by the Country.

*b* Brehon. The Irish called their Judges Brehons, and thereupon the Irish Law is called the Brehon Law.

*c* At a Parliament holden in Ireland by Howel Duke of Clarence, Lieutenant there, Anno 40 E. 3. at Kilkenny, and therefore called the Statute of Kilkenny, the Brehon Law is no Law, but a lewd custom crept in of later times, and never was the Law of the ancient Britains from whom they are descended.

*d* Cuttings. Under that name they comprehend Tallages and Impositions.

*e* Cosheries are preheminations, when the chief Lord and his retinue, &c. came to his Tenants house, and fed upon their provisions till all were spent.

Termondlands are the Glebe of the Church.

Erick signifieth a fine for an offence.

Galloglasses, Equites Triarii qui securibus utuntur acutissimis.

Kernes sunt pedites qui jaculis utuntur.

The Prorex there in former times hath been called Custos, Warden, Lieutenant, Chief Justice, Deputy of Ireland.

These Explications we have added for the better instruction of him who will read the Irish Laws.

Termondland.

Erick.

Galloglasses.

Kernes.



*Rex, &c. Johanni Mareſcallo dedimus & conceſſimus pro Homagio & ſervicio ſuo Mareſcalliam noſtram totius Hiberniæ cum omnibus pertinentiis, &c. Habendum ſibi & hæredibus ſuis de nobis & hæredibus noſtris.*

Rot Pat. 9. Johannis Regis Johanni Mareſcallo, of whom the Lord Morly is deſcended.

Regiſt. 294.

See the Register, that if an Archbiſhoprick or Biſhoprick in Ireland be void, that the Chapter ſhall ſue to the King in England to go to election, and after election made they ought upon certificate thereof made to the King to obtain his Royal Aſſent to this Election, and thereupon a Writ ſhall be directed out of the Chancery here, to the Chief Juſtice of Ireland, or his Lieutenant, rehearſing all this matter, and commanding him to take fealty of the Biſhop, and to reſtore him to his Temporalities. But now the courſe is in Ireland to make ſuch Writs there in the name of the King. But the King names the Archbiſhops and Biſhops there, as he doth in England; and then the Chapter choſe him whom the King names to them, and thereupon the Writs are made of courſe.

F.N.B. 169, 170.

And the reaſon of this change is worthy to be known: for the Charter of King John for Election of Biſhops, &c. extended only to the Biſhops, &c. of England. *a* But after that the whole Dominion of Ireland (as well concerning the Church as the Commonwealth) was eſtabliſhed to be governed by one Law with the Kingdom of England, as is aboveſaid, then the courſe of the Register was changed, and the ſame courſe taken there as it is in England.

*a* Carta Johannis Regis 15 Jan. apud novum London Ann. 18. Biſhops before were donative by the King.

10 E. 3. 1. b. per Perring.

17 E. 3. 40. per Stone, &c.

*b* Auferat obliivio, ſi poſeſt; ſi non, utrunque ſilencium regat.

And whereas heretofore ſome, not without ſcandal, have divided this Kingdom into the Engliſh Pale, and the wild Iriſh, *b* let oblivion bury it, or ſilence cover it, for now all are reduced to obedience and civil behaviour. So as a man may juſtly ſay of them as of the old Britains, Sunt in bello fortes, & in pace fideles. And for that ſome have given out that the Crown of England had this Country of Ireland of the donation of the Pope, we will ingenuouſly manifeſt the truth therein by the Records and Writings themſelves at large.

*Altitonantis Dei largiſſua clementia, qui eſt Rex Regum, & Dominus dominantium, ego Edgardus Anglorum Baſileus, omniumque rerum Inſularum Oceani quæ Britanniam circumjacent, cunctarumque Nationum quæ infra eam includuntur Imperator & dominus, gratias ago ipſi Deo Omnipotenti Regi meo, qui meum imperium ſic ampliavit & exaltavit ſuper regnum patrum meorum. Qui licet Monarchiam totius Angliæ adepti ſunt a tempore Athelſtani, qui primus Regum Anglorum omnes Nationes quæ Britanniam incolunt ſibi armis ſubegit, nullus tamen eorum ultra fines imperium ſuum dilatare aggreſſus eſt. Mihi tamen conceſſit propitia Divinitas cum Anglorum imperio omnia regna Inſularum Oceani cum ſuis ferociſſimis Regibus uſque Norvegiam maximamque partem Hiberniæ, cum ſua nobiliſſima Civitate de Dublina Anglorum regno ſubjugare, quos etiam omnes meis imperiis colla ſubdere, Dei favente gratia, coegi. Quapropter & ego Chriſti gloriam & laudem in regno meo exaltare, & ejus ſervitium amplificare devotus diſpoſui. Et per meos fideles fautores, Dunſtanum, viz. Archiepiſcopum Ayelolanum ac Oſwaldum Archiepiſcopos, quos mihi patres ſpirituales & conſiliatores elegi, magna ex parte diſpoſui, &c. Facta ſunt hæc Anno domini 964. Indiſtione 8. Regni vero Edgari Anglorum Regis 6. in regia urbe quæ ab incolis Ocleayecaſtria nominatur in natale Domini feſtivitate Sanctorum Innocentium feria 4. &c. ✠ Ego Edgar Baſileus Anglorum, & Imperator Regum gentium, cum conſenſu & Principum & Archiepiſcoporum meorum hanc meam munificentiam ſigno meo corroboravi. ✠ Ego Alſrye Regina conſenſi & ſigno Crucis confirmavi. Ego Dunſtan Archiepiſcopus Dorobor Eccleſiæ Chriſti conſenſi & ſubſcripſi ✠ Ego Oſticeſ Archiepiſcopus*

The Charter of King Edgar made Ann. Dom. 964. and in the 6 of his reign.

King Athelſtane reduced England to a Monarchy.

King Edgar conquered the great-eſt part of Ireland, with the moſt noble City of Dublin. Note the piety of this King.

Int. leges Edv. Regis & Confeſſoris fo. 137. b. Lamb. Arthurus qui quondam fuit inclytiſſimus Rex Britannorum, &c. ſubjugavit ſibi ſtrenue (inter alia) Hiberniam, &c.



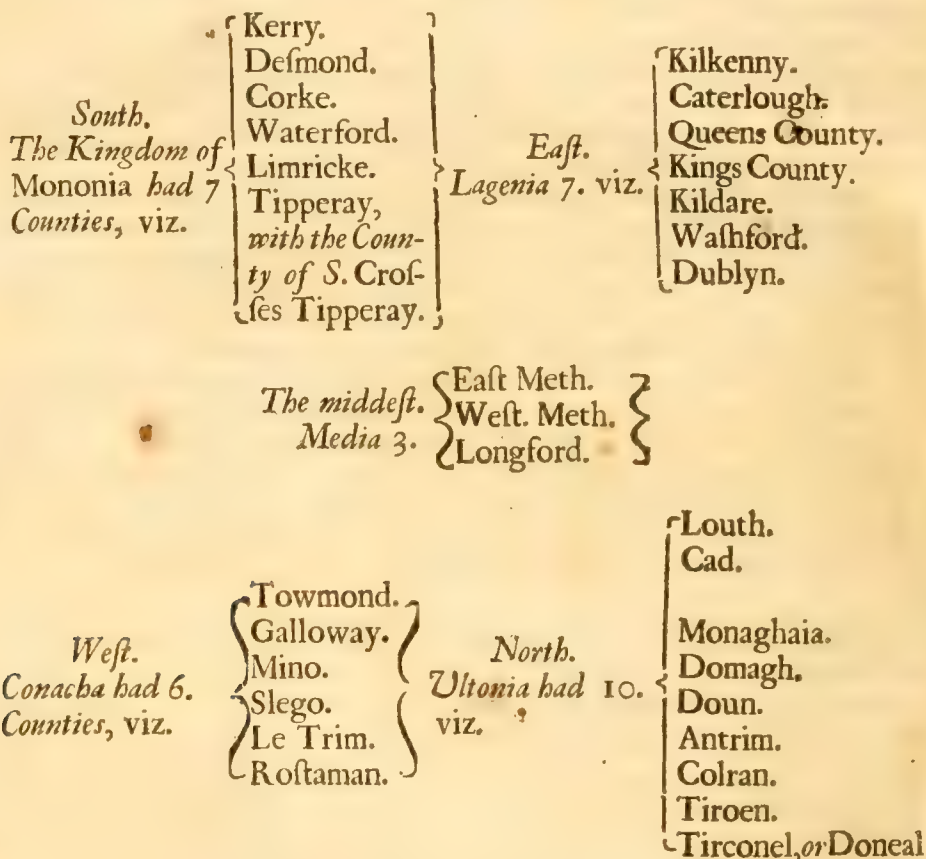
*Eboracensis Ecclesiæ consensi & subscripsi. Ego Alferic Dux. Ego Buthond Dux. Ego Aridgary Dux* ✠

And what Ecclesiastical Jurisdiction the Archbishop of Canterbury had in Ireland of ancient time before it was subject to the Crown of England, you may read in Camdens Britannia, pag. 735. & 765. as namely in the Consecration and Confirmation of their Bishops, by reason of his Primacy in Ireland.

Mich. 5 E. 3. coram  
Rege Rot 43.  
Hibernia.

A Justice in Ireland constituted by Letters Patents under the great Seal of England, cannot be removed from his office but by the King only.

Of the Pentarchy of Ireland.



Ireland hath 33 Counties, besides Cities, that are Counties of themselves.

King H. 2. at a Parliament holden at Oxford, Anno regni sui 23. created his Son John King of Ireland. But the succeeding Kings wrote themselves Domini Hiberniæ, until the 33 year of H. 8. in which year he took upon him the name of King of Ireland.

Rot. Parl. 3 R. 2. nu.  
43. in England.  
Mines of Gold and  
Silver.  
Bra & li. 2. fo. 222.  
Fleta lib. 4. fo. 119.  
Pl. Com. in the case  
of Mines.  
Coinage at Dublin.  
\* Rot. Pat. 5 H. 6.  
1 part.

It was enacted by Authority of Parliament, that every man during six years might dig in his own proper soile in Ireland Gold or Silver, &c. yielding to the King the ninth part thereof, and that they make Plate or Coine thereof at the Kings Coinage in Dublin, paying the fees: and that none carry thereout any of the said Gold, Silver or Bullion, but into England, without the Kings licence, on pain to lose the same.

\* A grant of all Mines of Gold and Silver within England, &c. to the Duke of Bedford Regent of France, &c. rendering to the Church the tenth part: to the King the sixteenth part: to the owner of the soile the twentieth part.

To conclude with somewhat which tends to the honour of that Noble Nation. Certain it is, that whiles the Liberal Sciences in Europe lay in a manner buried in darkness, then did their lustre shine forth most clearly here in Ireland; thither did our English Saxons repair, as to a Fair or Market of good Letters:

Letters: whence of the holy men of those times we often read in ancient Writers, *Amandatus est ad disciplinam in Hiberniam*: he was sent into Ireland to study there.

Camden in Hibernia.

He that is desirous to read more Records concerning this Kingdom of Ireland, he may read these *Coram Rege* in the Kings Bench. Trin. 13 E. 1. Rot. 36. 38. Hibernia. Mich. 17 E. 1. Rot. 31. 38. Hibernia. Hil. 19 E. 1. Rot. 68. Hibernia. Pasch. 19 E. 1. Rot. 69. Hibernia. Trin. 20 E. 1. Rot. 40. Pasch. 34 E. 1. Rot. 104. Mich. 5 E. 3. Rot. 40 & 46. Mich. 6 E. 3. Rot. 55. Hibernia.

## ¶ Of the precedency of the great Officers, Nobility, and others of this Realm.

*For of the precedency of the King himself and of other Kings and supreme Princes, I take not upon me to write, but refer you to learned Camden, Lib. Annal. Anno Domini 1600. 42 Eliz. pag.*

At the Common Law, the King by his Prerogative Royal might give such honor, reputation and placing to his Counsellors and other his subjects as should be seeming to his wisdom, which Prerogative was so declared by Act of Parliament.

a By this Prerogative, Henrico Beauchamp concessit Rex Henricus Sextus, ut primus & præcipuus esset Angliæ Comes, & hoc titulo uteretur; Henricus Præcomes totius Angliæ & Comes Warwici, Vectæ Insulæ regulum dixit; posteaque Ducem Warwici creavit, & concessit, ut haberet sedem in Parliamentis, & alibi proximam Duci Norf. & ante Ducem Buckinghamiæ.

The same King created Edmond of Hadham to be Earl of Richmond, and granted him precedency before all other Earls. He also created Jasper of Hatfield Earl of Pembroke, and gave him precedency before all other Earls next to his brother the said Edmond Earl of Richmond. But hereof these examples shall suffice.

King H. 8. though standing as much upon his Prerogative as any of his Progenitors, yet finding how vexatious it was to himself, and how distastful to his ancient Nobility to have new raised degrees to have precedency of them, and finding that this kind of controversie for precedency was of that nature, that it had many partakers, spent long time, and hindered the arduous, urgent and weighty affairs of the Parliament, was content to bind and limit his Prerogative by Act of Parliament concerning the precedency of his great Officers, and of his Nobility. And first for the Lords Spiritual (who sit in Parliament on the Kings right hand) amongst themselves.

1. The Archbishop of Canterbury. 2. The Archbishop of York on the same form. 3. The Bishop of London. 4. The Bishop of Duresme. 5. The Bishop of Winchester, and then all the other Bishops of both Provinces shall sit and be placed after their Anciencies, as before this Act was accustomed. But having regard to the Lords and noble Peers of the Realm, both the Archbishops have place above all the great Officers and Nobility in Parliament, Council and Commissions, saving in the Star-chamber, the Lord Chancellor or Lord Keeper hath the precedency of them. But the other Bishops have place above all the Barons of the Realm, because they hold their Bishoprick of the King per Baroniam, but they give place to Viscounts, Earls, Marquesses and Dukes.

Concerns

Præcedere est præcedo incedere. Qui præcellit præcedere debet. Most ancient is most honourable Aristot. 1 Metaph. cap. 3. 31 H. 8. c. 10. in the Preamble. a Rot. Pat. 23 H. 6. Vid. Rot. Pat. 28 H. 6. 2 parte m. 23. Precedency granted to R. Earl of Warw.

31 H. 8. cap. 10.



*Nota*, The Lord Steward of *England* is not here mentioned, because it was intended that when the use of him should be necessary, he should not endure longer then *hac vice*.  
\* i. The Kings Grandchild.  
Note the degrees within that Act.

Concerning the great Officers of the Realm. 1. The Lord Chancellor or Lord Keeper of the Great Seal. 2. The Lord Treasurer. 3. The Lord President of the Kings Council. 4. The Lord Privy Seal, being of the degree of Barons of Parliament, or above, shall sit and be placed in Parliament on the higher part of the form above all Dukes, except only such as shall happen to be the Kings Son, the Kings Brother, the \* Kings Nephew, or the Kings Brothers or Sisters Sons. See an Act made in 28 H.8. c. 18. making it treason for marrying, &c. with any of the blood Royal within certain degrees: but it is repealed. 5. The Great Chamberlain of England. 6. The Constable. 7. The Marshal. 8. The Lord Admiral. 9. The Lord Steward of the Kings house. 10. The Kings Chamberlain shall sit and be placed after the Lord Privy Seal in manner and form following, viz. every of them shall sit and be placed above all other Personages being of the same state and degree: as if he be a Baron, above all Barons: if a Viscount, above all Viscounts: if an Earl, above all Earls, &c. 11. The Kings principal Secretary being a Baron of the Parliament shall sit above all Barons not having any of the offices aforesaid. But if he be a Viscount, an Earl, or any other higher degree, he shall not take the place of any Viscount, Earl, or higher degree, as it was resolved in the case of Robert Cecil, Earl of Salisbury. And if the Secretary be a Bishop, he shall take the place of all other Bishops not having any of the offices aforesaid, but not above the Archbishops.

The general clause

All other Dukes not before mentioned, Marqueses, Earls, Viscounts and Barons, not having any of the offices aforesaid, shall all sit and be placed after their Ancienty, as hath been accustomed.

¶ All other Dukes, &c. If the King should create a Duke to the estate of Archduke, yet by force of these words he shall not take place of any Duke that was his Ancient, Et sic de similibus: otherwise this Statute might be made of no force: and an Archduke is some other Duke.

If any person being Lord Chancellor, Lord Keeper, Lord Treasurer, Lord President, Lord Privy Seal, or Chief Secretary, shall be under the degree of a Baron of Parliament, they shall in Parliaments sit in the uppermost part of the Sacks in the middle of the Parliament Chamber, &c. But in the Stat-chamber, and all other Assemblies and conferences of Council, they shall sit and be placed as is above rehearsed; and in \* no other place. Lastly, The Lord Chancellor, Lord Keeper, Lord Treasurer, Lord President, Lord Privy Seal, being Lords of Parliament: The great Chamberlain, the Constable, the Marshal, the Lord Admiral, the Lord Steward, the Kings Chamberlain, and the Kings Chief Secretary shall sit and be placed in such order and fashion as is above rehearsed, and not in any other place, by Authority of this Parliament. Vid. Statut. de 10 R.2. cap.1.

\* The words negative were added to avoid all scruple, that the order for precedency set down in this Parliament should not be altered by any *non obstante*.

a Rot. Parl. Anno 3 H.6. in principio, & nu.10.

b Rot. Parl. 27 H.6. nu. 18.

Vide Rot. Parl.

11 H.6.m.9. nu.32

33,34,35. between

the Earl of Arundell and Moubrey

Earl of Norf.

Rot. Parl. 3 H.6. in

principio cited in

the Earl Marshals

case.

c Hol. Chron. pag.

620. 10.

Hill 143. &c.

Anno 20 H.6.

d Rot. Parl. 6 H.6.

nu. 22,23,24.

a He that is desirous to understand the true Rules of Precedency of the Nobles of this Realm in the High Court of Parliament, &c. let him read the great case between John Earl Marshal, and Richard Earl of Warwick, in Parliament, and the affirmations, answers, and replications on both parts exceeding long, but full of notable rules, reasons, and presidents concerning Precedency, both in respect of the Blood Royal, and otherwise: together with the Lines and Pedegrees, Seats, and Places of many Noble Men very delightful to be read.

b Another between William Earl of Arundel, and Thomas Earl of Devon: wherein you shall read notable matter concerning the Castle and Honor of Arundel precedently adjudged by the Lords in Parliament in the reign of H.4. between the Earl of Arundel and the Earl of Kent.

c If a Bishop of this Realm be made a Cardinal, he shall not take any place of precedency in Parliament as Cardinal, but take his place in right of his Bishoprick, which he holdeth of the King per Baroniam, in respect whereof he sitteth in Parliament.

d If a Duke or Earl, &c. be made Protector of the Realm in Parliament, he shall



shall have no other place but as a Duke or Earl, &c. Percey you may perceive how necessary it was to set down by authority of Parliament in certainty the place and precedency that great Officers should have in Parliament, who sit not there in right of their Offices, but of their Nobility: And the names of dignities of the Nobility are parcel of their names, and so ought to be named in the Kings Writs: but the Offices of Chancelor, Treasurer, and other Offices are not parcel of their names, & therefore in the Kings writs needed not to be so named.

It is also enacted by Authority of the said Act of 31 H. 8. that in all trials of Treasons by the Peers of this Realm, the said great Officers of this Land shall sit and be placed according to their Offices, above all other the Peers, as is aforesaid.

We have perused the List of the names of the Lords of Parliament sitting in Parliament both of ancient and later time, wherein we can gather no certainty for precedency.

Thus far for avoiding of contention about precedency in Parliaments, Star Chamber, and all other Assemblies and Conferences of council, and upon trials by the Peers of the Realm was necessary.

Now he that desireth to know the places and precedency of the Nobility and Subjects of the Realm, as well men as women, and of their children: we for avoiding of tediousness will refer them to a Record of great authority in the Reign of H. 7. (for we will not vouch Barth. Cassaneus or any other foreign Author) intituled Series ordinum omnium procerum, magnatum, & nobilium, & aliorum quorumcunque infra hoc regnum tam virorum quam foeminarum, posita & distincta per nobilissimum Jasparrum Ducem Bedford & alios nobiles appunctuatione Domini Regis Henrici septimi: (but this Record dealeth not with the places of any of the great Officers) whereunto we will refer you: wherein you shall see what places both the Sons, \* Wives, and Daughters, of Lords of Parliament, as Dukes, Marqueses, Earls, Viscounts, and Barons shall have, and of Banerets, Knights, Esquires, and Gentlemen, and of their Wives and Children shall have.

If any question be moved in Parliament for privilege or precedency of any Lord of Parliament, it is to be decided by the Lords of Parliament in the house of the Lords, as all privileges, and other matter concerning the Lords House of Parliament are, as privileges and other matters concerning the House of Commons are by the House of Commons to be decided.

The determination of the places and precedencies of others doth belong to the Court of the Constable and Marshal, unless any question riseth upon the said Act of Parliament of 31 H. 8. for that being part of the Law of the Realm (as all other Statutes be) is to be decided by the Judges of the Common Law.

*g* Nobilis est qui generis sui imagines proferre potest. *h* Flavia gens obscura quidem & sine imaginibus.

Tota licet veteres exornent *i* undique Cerae  
Atria, nobilitas sola est atque unica virtus.

Major est nobilitas quam virtus: virtus enim sine nobilitate esse potest, nobilitas autem sine virtute esse non potest.

*k* Arma seu insignia gentilitia ex antiquo habuerunt loco imaginum. So as now the best discussing of antiquity of Gentry is per insignia.

— Armaque fixit  
Troia —

Virgil.

And by the Laws of England as all the degrees of nobility and honour were derived from the King as the fountain of honour: \* so all the Lands in Eng-

Seft. 1. fol. 9. b. Seft. 95. fol. 69. a. b. Seft. 112. fol. 83. b. Seft. 241. f. 165. a. Seft. 14, 15. f. 20. a. Seft. 137. f. 97. a. Seft. 201. f. 134. a. Seft. 648. f. 344. a. &c.

land

*a* 7 H. 6. fol. 15.  
Vid. Rot. Parl.

15 E. 3. nu. 7.

*b* This is put for an example, for it extendeth to all trials by Peers, not only in case of treason, but in case of felony, misprision of treason and felony, and so ever since this Statute hath it been put in use.

*c* Barth. Cassaneus in Catalogo glorie mundi.

*d* Series ordinum tempore H. 7.

*e* Vid. Camden Eliz. p. 475.

\* Which we have added the rather, for that the contention about precedency between persons of that sex is ever fiery, furious, and sometime fatal.

Vid. the Parliament Rolls ubi supra.

*f* Vid. Rot. Parl.

31 H. 6. n. 27. See 3 H. 6. nu. 10. between Mowbray Earl of Norf. and Beauchamp Earl of Warwick.

*g* Cicero. Plin. lib. 39. apud majores &c. optime.

*h* Tranquillus in Vesp.

*i* Juvenal. *i*. Cereæ imagines.

*k* Corte de Armes, A coat armor, that is, a long coat over armor with his Arms embroidered upon it.

\* See the 1. part of the Institutes, Sect. 1. &c. and in that first part in divers places many things concerning nobility and their creations, and of the gaining and losing thereof, &c. viz. Sect. 9. fol. 17. a. b.



land were originally derived from the Crown of England, and are holden of the same mediately or immediately. See before in the Chapter of the high Court of Parliament.

As names make known singular persons, so Arms distinguish several Families.

It is worthy of remembrance, and fit for example, that when Thomas Lord Cromwel by a flattering Herald was offered in the time of King H. 8. to fetch his pedigree from the ancient Lord Cromwel, that he might bear his Coat, he answered that he would wear a Coat of his own, lest another mans Coat might be taken from him : unto whom the King, as advanced by him, gave this Coat, Quarterly indented per Fesse, Or and Azure, four Lions counterchanged : where the old Lord Cromwels Coat was Argent, a Chief Gules, a Bend Azure. The said Act of 31 H. 8. extendeth not to Archbishops and Bishops, therefore it is necessary to speak somewhat of them also. In ancient time they had great precedence, even before the brother of the King, as it appeareth by the Parliament Roll of 18 E. 1. and many others, which continued until it was altered by Ordinance in Parliament in the reign of King H. 6. as it appeareth by a Roll of Parliament of that Kings reign, entred in the back of the Parliament Roll. The precedence in Parliament, and other places of Council at this day (whereunto we aim) is, the two Archbishops have the precedence of all the Lords Temporal; and every other Bishop in respect of his Barony hath place of all the Barons of the Realm, and under the estate of the Viscount and other superior dignities. The Bishops between themselves have this precedence. First, The Bishop of London, and after him the Bishop of Duresme, and then the Bishop of Winchester, and after him every Bishop as he is in seigniority. But to this day, in all Acts, Ordinances and Judgments, &c. of Parliament it is said, the Lords Spiritual and Temporal.

Rot. Pat. 9 Jacobi  
8 part. nu. 45.  
Baronets and  
others.

The first creation of Baronets was in An. 9 Jac. Regis: what place and precedence these Baronets and divers others shall hold, you may read Rot. pat. 10 Jac. Regis part. 10. m. 8. & Rot. pat. Anno 14 Jac. Regis part. 2. m. 24.

To conclude this Chapter with the Code of Theodosius, &c. Ut dignitatum ordo servetur, si quis indebitum sibi locum usurpaverit, nulla se ignoratione defendat, sitque planè sacrilegii reus.

# THE EPILOGUE.



Thus have we by the great goodness of the Almighty brought this painful Work, consisting of such, and so many varieties and difficulties, concerning the Jurisdiction of such, and so many distinct Courts (above the number of 100.) to a conclusion: and in some few cases, where we have differed from others in opinion, we have shewed the cause and

beginning of these errors (as we take them:) for it is a sure Rule, *Quod errores ad sua principia referre, est refellere*, to bring errors to their first, is to see their last. Wherein we have strengthened our opinion with our two great guides, Authority and Reason, and not trusted Abridgements, Polyanthea's, or taken any thing upon trust, but have searched the Fountains themselves, alway holding this Rule, *Quod satius est petere fontes, quam sectari rivulos*: And our desired end is, that all these high and honourable Tribunals, and other subordinate Courts and venerable Seats of Justice may prosper and flourish in distribution of Justice, which assuredly they shall do, if they derive all their power and strength from their proper roots.

Whilst we were in hand with these four Parts of the Institutes, we often having occasion to go into the City, and from thence into the Country, did in some sort envy the state of the honest Plowman, and other Mechanicks; for the one when he was at his work would merrily sing, and the Plowman whistle some self-pleasing tune, and yet their work both proceeded and succeeded: But he that takes upon him to write, doth captivate all the faculties and powers both of his mind and body, and must be only intentive to that which he collecteth, without any expression of joy or cheerfulness, whilst he is in his work.

Throughout all this Treatise we have dealt cleerly and plainly concerning some pretended Courts, which either are no Courts warrantable by Law, as we conceive them, or which without warrant have incroached more jurisdiction then they ought. *Qui non libere veritatem pronuntiat, proditor veritatis est.* Wherein if any of our honourable friends shall take offence, our Apology shall be, *Amicus Plato, amicus Socrates, sed magis amica Veritas.* Having ever in memory that saying of the Kingly Prophet, *Keep innocency, and take heed to the thing that is right, and that will bring a man peace at the last.* Plal. 37, 38.

And you Honourable and Reverend Judges and Justices, that do or shall sit in the high Tribunals and Courts or Seats of Justice, as  
A aforesaid,

*Agri colam laudat Iuris  
Legumque Peritus.*



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## The Epilogue.

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Lib.Sap.cap.17.  
12.Nihil est timor  
nisi proditio co-  
gitationis auxilio-  
rum.

aforesaid, fear not to do right to all, and to deliver your opinions justly according to the Laws: for fear is nothing but a betraying of the succours that reason should afford. And if you shall sincerely execute justice, be assured of three things: First, though some may maligne you, yet God will give you his blessing. Secondly, that though thereby you, may offend great men and Favourites, yet you shall have the favourable kindnesse of the Almighty, and be his Favou-rites. And lastly, that in so doing, against all scandalous complaints, and pragmatial devices against you, God will defend you as with a shield:  
\* *For thou Lord wilt give a blessing unto the righteous, and with thy favourable kindness wilt thou defend him as with a shield.*

\* Psal. 5. 13.

Aristotle.

And for that we have broken the Ice, and out of our own Industry and observation framed this high and honourable Building of the Jurisdiction of Courts, without the help of furtherance of any that hath written this Argument before, I shall heartily desire the wise hearted and expert Builders (Justice being *Architectonica Virtus*) to amend both the method or uniformity, and the structure it self, wherein they shall find either want of windows, or sufficient lights, or other deficiency in the Architecture whatsoever: And we will conclude with the Aphorisme of that great Lawyer and Sage of the Law (which we have heard him often say) *Blessed be the amending hand.*

Edm. Plowden.

*Deo gloria & gratia.*

FINIS.

7 16 2761

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A

# A T A B L E,

To the fourth Part of the Institutes of the Laws of  
England, concerning the Jurisdiction of Courts.

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<b>G</b>		<i>Qui eorum vestigia insistant eorum exitus perhorrescant.</i>	41
<i>Gravius est eternam quam temporalem ledere majestatem.</i>	11	<i>Qui per alium facit per ipsum facere videtur.</i>	109
<i>General words taken in digniori sensu.</i>	105, 112	<i>Quando lex aliquid alicui concedit, concedere videtur &amp; id, sine quo res ipsa non potest esse.</i>	111
<b>I</b>		<i>Quod non legitur non creditur.</i>	304
<i>In presentia majoris cessat potentia minoris.</i>	7, 73, 184	<i>Quamvis lex generaliter loquitur restringenda tamen, ut cessante ratione, &amp; ipsa cesset, &amp;c.</i>	330
<i>Justicia est virtus excellens, &amp; altissimo complacens.</i>	58	<i>Qui non libere veritatem pronunciat, proditor veritatis est.</i>	Epilogue.
<i>Infinitum reprobatur in jure.</i>	115	<b>R</b>	
<i>Ideo penes lectorem sit judicium.</i>	260	<i>Regis ad exemplum totius componitur orbis.</i>	193
<i>Ignorantia judicis est calamitas innocentis.</i>	265	<b>S</b>	
<i>Interpretatio talis in ambiguis semper fienda est ut evitetur inconveniens, &amp; absurdum.</i>	328	<i>Salus ubi multi consilarii.</i>	1
<b>M</b>		<i>Sapiens omnia agit cum consilio.</i>	4
<i>Multa multo exercitamenti facilius, quam regalis precipies.</i>	50	<i>Silent leges inter arma.</i>	70
<i>Melius est recurrere quam male currere.</i>	176	<i>Spes est vigilantis somnium.</i>	203
<i>Melior est conditio possidentis, &amp; rei quam actoris.</i>	180	<i>Satius est petere fontes quam sectari rivulos.</i>	380, & Epilogue.
<i>Misera servitus est ubi jus est vagum aut incognitum.</i>	246, 332	<b>V</b>	
<i>Malus usus abolendus est.</i>	274	<i>ut poena ad paucos metus ad omnes perveniat.</i>	63
<i>Multi multa, nemo omnia novit.</i>	348	<i>Veritas a quocunque dicitur a Deo est.</i>	153, 344
<i>Malum in se.</i>	263	<i>Vicini viciniora facta presumuntur scire.</i>	173
<b>N</b>		<i>ubi non est lex ibi non est transgressio.</i>	308
<i>Nihil tam conveniens est naturali equitati unumquodque dissolvere eo ligamine quo ligatum est.</i>	28, 122	<i>ut obstruatur os iniqua loquentium.</i>	322
		<i>uno absurdo dato infinita sequuntur.</i>	329

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